

## **Appendix A**

### **CRIMINAL PENALTIES STUDY COMMITTEE MEMBERS AND APPOINTING AUTHORITY**

Honorable Thomas Barland, Chair Eau Claire County Circuit Court	Public Member, appointed by the Governor
Nicholas Chiarkis Wisconsin State Public Defender	State Public Defender
Professor Walter Dickey	University of Wisconsin Law School faculty member, appointed by the Governor
Matthew Frank Assistant Attorney General	Designee of the Attorney General
Gregory Everts Attorney at Law	Designee of the Senate Minority Leader <sup>1</sup>
Honorable Patrick Fiedler Dane County Circuit Court	Circuit Judge, appointed by the Supreme Court
Bradley Gehring Outagamie County Sheriff	Law enforcement agency representative, appointed by the Governor
Professor Thomas Hammer	Marquette University Law School faculty member, appointed by the Governor
Senator Joanne Huelsman	Designee of the Senate Majority Leader <sup>2</sup>
Stephen Hurley Attorney at Law	Member of the Criminal Law Section of the State Bar, appointed by the Governor
William Jenkins Aurora Healthcare, Inc.	Public Member, appointed by the Governor
Honorable Elsa Lamelas Milwaukee County Circuit Court	Public Member, appointed by the Governor
Honorable Michael Malmstadt Milwaukee County Circuit Court	Designee of the Assembly Minority Leader

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<sup>1</sup> The appointing authority for Mr. Everts was, at the time the appointment was made, the Senate Minority Leader.

<sup>2</sup> The appointing authority for Senator Huelsman was, at the time the appointment was made, the Senate Majority Leader.

E. Michael McCann  
Milwaukee County District Attorney

District Attorney, appointed by Attorney General

Barbara Powell  
Wisconsin Department of Corrections

Designee of the Secretary of the Department of  
Corrections

Linda Pugh  
Milwaukee Women's Center

Crime victims representative, appointed by  
Attorney General

Honorable Diane Sykes  
Milwaukee County Circuit Court

Designee of the Assembly Majority Leader

Judge Lee Wells  
Milwaukee County Circuit Court

Circuit Judge, appointed by the Supreme Court

## **MEMBERS OF SUBCOMMITTEES**

### **CODE RECLASSIFICATION SUBCOMMITTEE**

Thomas Hammer - Chair  
Nicholas Chiarkas  
Matthew Frank  
Joanne Huelsman  
Stephen Hurley  
Diane Sykes  
Thomas Barland – ex officio

### **SENTENCING GUIDELINES SUBCOMMITTEE**

Elsa Lamelas - Chair  
Walter Dickey  
Gregory Everts  
Stephen Hurley  
Michael Malmstadt  
E. Michael McCann  
Linda Pugh  
Lee Wells  
Thomas Barland - ex officio  
Michael Smith - consultant

### **EXTENDED SUPERVISION REVOCATION SUBCOMMITTEE**

Patrick Fiedler - Chair  
Bradley Gehring  
William Jenkins  
Barbara Powell  
Diane Sykes  
Lee Wells – ex officio  
Thomas Barland – ex officio

### **COMPUTER MODELING**

Walter Dickey – Chair  
Matthew Frank  
Thomas Barland – ex officio

### **EDUCATION COMMITTEE**

Diane Sykes - Chair  
Patrick Fiedler  
Stephen Hurley  
William Jenkins  
Thomas Barland – ex officio

## **Appendix B**

### **CRIMINAL PENALTIES STUDY COMMITTEE MEETING DATES AND PLACES**

<u>Date</u>	<u>Place</u>
August 28, 1998	Room 328NW, State Capitol, Madison
October 2, 1998	Room 417N, State Capitol, Madison
October 16, 1998	Room 417N, State Capitol, Madison
November 20, 1998	Room 417N, State Capitol, Madison
December 11, 1998	Room 417N, State Capitol, Madison
January 8, 1999	Room 417N, State Capitol, Madison
January 21-22, 1999	The Concourse Hotel, Madison
February 19, 1999	Room 417N, State Capitol, Madison
March 5, 1999	Room 417N, State Capitol, Madison
March 18-19, 1999	The Country Inn, Waukesha
April 16, 1999	Room 417N, State Capitol, Madison
April 30, 1999	Room 417N, State Capitol, Madison
May 13-14, 1999	The Chula Vista Resort, Wisconsin Dells
June 4, 1999	North Hearing Room, State Capitol, Madison
June 25, 1999	Room 417N, State Capitol, Madison
July 9, 1999	Room 417N, State Capitol, Madison
July 30, 1999	Room 417N, State Capitol, Madison
August 16, 1999	Room 417N, State Capitol, Madison
August 20, 1999	Room 417N, State Capitol, Madison

**Appendix C**

**BUDGET PROJECTION FOR SENTENCING COMMISSION**

	#FTE	Class rate	Salary	Fringe	Supplies & Services	One-time Costs	Total Year 1	Annualized Cost
Exec. Director	1	23.7	49,296	17,668	1,200	5,500	73,664	68,164
Dep. Director	1	19.727	41,032	14,706	1,200	5,500	62,438	56,938
Data Entry Operator	1	9.437	19,629	7,035	1,200	5,500	33,364	27,864
Research Analyst	2	15.593	32,433	11,624	1,200	5,500	101,515	90,515
Training Coordinator	1	15.593	32,433	11,624	1,200	5,500	50,758	45,258

DOA rate  
35.84%

	<u>Year 1</u>	<u>Annualized</u>	<u>One-time costs/FTE</u>
Staff Costs	321,739	288,739	2,500 Furniture
Publications	70,000	70,000	3,000 Computer
Rent	20,000	20,000	
<b>Total</b>	<b>411,739</b>	<b>378,739</b>	

## Appendix D

### CONVERSION TABLE

Old Indeterminate Sentence	First Release Eligibility on Old Indeterminate Sentence (25% of Sentence)	Mandatory Release Date on Old Indeterminate Sentence (67% of Sentence)	Truth-In-Sentencing Determinate Sentence Range
1 y.	6m.	8 m.	6m. to 8 m.
1 y. 6 m.	6m.	1 y.	6m. to 1 y.
2 y.	6 m.	1 y. 4 m.	6 m. to 1 y. 4 m.
2 y. 6 m.	8 m.	1 y. 8 m.	8 m. to 1 y. 8 m.
3 y.	9 m.	2 y.	9 m. to 2 y.
4 y.	1 y.	2 y. 8 m.	1 y. to 2 y. 8 m.
5 y.	1 y. 3 m.	3 y. 4 m.	1 y. 3 m. to 3 y. 4 m.
6 y.	1 y. 6 m.	4 y.	1 y. 6 m. to 4 y.
7 y.	1 y. 9 m.	4 y. 8 m.	1 y. 9 m. to 4 y. 8 m.
8 y.	2 y.	5 y. 4 m.	2 y. to 5 y. 4 m.
9 y.	2 y. 3 m.	6 y.	2 y. 3 m. to 6 y.
10 y.	2 y. 6 m.	6 y. 8 m.	2 y. 6 m. to 6 y. 8 m.
11 y.	2 y. 9 m.	7 y. 4 m.	2 y. 9 m. to 7 y. 4 m.
12 y.	3 y.	8 y.	3 y. to 8 y.
13 y.	3 y. 3 m.	8 y. 9 m.	3 y. 3 m. to 8 y. 9 m.
14 y.	3 y. 6 m.	9 y. 5 m.	3 y. 6 m. to 9 y. 5 m.
15 y.	3 y. 9 m.	10 y. 1 m.	3 y. 9 m. to 10 y. 1 m.
16 y.	4 y.	10 y. 9 m.	4 y. to 10 y. 9 m.
17 y.	4 y. 3 m.	11 y. 5 m.	4 y. 3 m. to 11 y. 5 m.
18 y.	4 y. 6 m.	12 y. 1 m.	4 y. 6 m. to 12 y. 1 m.
19 y.	4 y. 9 m.	12 y. 9 m.	4 y. 9 m. to 12 y. 9 m.
20 y.	5 y.	13 y. 5 m.	5 y. to 13 y. 5 m.
21 y.	5 y. 3 m.	14 y. 1 m.	5 y. 3 m. to 14 y. 1 m.
22 y.	5 y. 6 m.	14 y. 9 m.	5 y. 6 m. to 14 y. 9 m.
23 y.	5 y. 9 m.	15 y. 5 m.	5 y. 9 m. to 15 y. 5 m.
24 y.	6 y.	16 y. 1 m.	6 y. to 16 y. 1 m.
25 y.	6 y. 3 m.	16 y. 9 m.	6 y. 3 m. to 16 y. 9 m.
26 y.	6 y. 6 m.	17 y. 5 m.	6 y. 6 m. to 17 y. 5 m.
27 y.	6 y. 9 m.	18 y. 1 m.	6 y. 9 m. to 18 y. 1 m.
28 y.	7 y.	18 y. 9 m.	7 y. to 18 y. 9 m.
29 y.	7 y. 3 m.	19 y. 5 m.	7 y. 3 m. to 19 y. 5 m.
30 y.	7 y. 6 m.	20 y. 1 m.	7 y. 6 m. to 20 y. 1 m.
31 y.	7 y. 9 m.	20 y. 9 m.	7 y. 9 m. to 20 y. 9 m.
32 y.	8 y.	21 y. 5 m.	8 y. to 21 y. 5 m.
33 y.	8 y. 3 m.	22 y. 1 m.	8 y. 3 m. to 22 y. 1 m.
34 y.	8 y. 6 m.	22 y. 9 m.	8 y. 6 m. to 22 y. 9 m.
35 y.	8 y. 9 m.	23 y. 5 m.	8 y. 9 m. to 23 y. 5 m.
36 y.	9 y.	24 y. 1 m.	9 y. to 24 y. 1 m.
37 y.	9 y. 3 m.	24 y. 9 m.	9 y. 3 m. to 24 y. 9 m.
38 y.	9 y. 6 m.	25 y. 6 m.	9 y. 6 m. to 25 y. 6 m.
39 y.	9 y. 9 m.	26 y. 2 m.	9 y. 9 m. to 26 y. 2 m.
40 y.	10 y.	26 y. 10 m.	10 y. to 26 y. 10 m.

Average Actual-Time Served Under Indeterminate Sentencing *				
Old Indeterminate Sentence	Assaultive (47% of Sentence)	Sex/Assault (57% of Sentence)	Drug (40% of Sentence)	Property/Other (48% of Sentence)
1 y.	6 m.	7 m.	5 m.	6 m.
1 y. 6 m.	8 m.	10 m.	7 m.	9 m.
2 y.	11 m.	1 y. 2 m.	10 m.	1 y.
2 y. 6 m.	1 y. 2 m.	1 y. 5 m.	12 m.	1 y. 2 m.
3 y.	1 y. 5 m.	1 y. 9 m.	1 y. 2 m.	1 y. 5 m.
4 y.	1 y. 11 m.	2 y. 3 m.	1 y. 7 m.	1 y. 11 m.
5 y.	2 y. 4 m.	2 y. 10 m.	2 y.	2 y. 5 m.
6 y.	2 y. 10 m.	3 y. 5 m.	2 y. 5 m.	2 y. 11 m.
7 y.	3 y. 3 m.	4 y.	2 y. 10 m.	3 y. 4 m.
8 y.	3 y. 9 m.	4 y. 7 m.	3 y. 2 m.	3 y. 10 m.
9 y.	4 y. 3 m.	5 y. 2 m.	3 y. 7 m.	4 y. 4 m.
10 y.	4 y. 8 m.	5 y. 8 m.	4 y.	4 y. 10 m.
11 y.	5 y. 2 m.	6 y. 3 m.	4 y. 5 m.	5 y. 3 m.
12 y.	5 y. 8 m.	6 y. 10 m.	4 y. 10 m.	5 y. 9 m.
13 y.	6 y. 1 m.	7 y. 5 m.	5 y. 2 m.	6 y. 3 m.
14 y.	6 y. 7 m.	8 y.	5 y. 7 m.	6 y. 9 m.
15 y.	7 y. 1 m.	8 y. 7 m.	6 y.	7 y. 2 m.
16 y.	7 y. 6 m.	9 y. 1 m.	6 y. 5 m.	7 y. 8 m.
17 y.	8 y.	9 y. 8 m.	6 y. 10 m.	8 y. 2 m.
18 y.	8 y. 6 m.	10 y. 3 m.	7 y. 2 m.	8 y. 8 m.
19 y.	8 y. 11 m.	10 y. 10 m.	7 y. 7 m.	9 y. 1 m.
20 y.	9 y. 5 m.	11 y. 5 m.	8 y.	9 y. 7 m.
21 y.	9 y. 10 m.	11 y. 11 m.	8 y. 5 m.	10 y. 1 m.
22 y.	10 y. 4 m.	12 y. 6 m.	8 y. 10 m.	10 y. 7 m.
23 y.	10 y. 10 m.	13 y. 1 m.	9 y. 2 m.	11 y.
24 y.	11 y. 3 m.	13 y. 8 m.	9 y. 7 m.	11 y. 6 m.
25 y.	11 y. 9 m.	14 y. 3 m.	10 y.	12 y.
26 y.	12 y. 3 m.	14 y. 10 m.	10 y. 5 m.	12 y. 6 m.
27 y.	12 y. 8 m.	15 y. 5 m.	10 y. 10 m.	13 y.
28 y.	13 y. 2 m.	16 y.	11 y. 2 m.	13 y. 5 m.
29 y.	13 y. 8 m.	16 y. 6 m.	11 y. 7 m.	13 y. 11 m.
30 y.	14 y. 1 m.	17 y. 1 m.	12 y.	14 y. 5 m.
31 y.	14 y. 7 m.	17 y. 8 m.	12 y. 5 m.	14 y. 11 m.
32 y.	15 y.	18 y. 3 m.	12 y. 10 m.	15 y. 4 m.
33 y.	15 y. 6 m.	18 y. 10 m.	13 y. 2 m.	15 y. 10 m.
34 y.	16 y.	19 y. 5 m.	13 y. 7 m.	16 y. 4 m.
35 y.	16 y. 5 m.	19 y. 11 m.	14 y.	16 y. 10 m.
36 y.	16 y. 11 m.	20 y. 6 m.	14 y. 5 m.	17 y. 3 m.
37 y.	17 y. 5 m.	21 y. 1 m.	14 y. 10 m.	17 y. 9 m.
38 y.	17 y. 10 m.	21 y. 8 m.	15 y. 2 m.	18 y. 3 m.
39 y.	18 y. 4 m.	22 y. 3 m.	15 y. 7 m.	18 y. 8 m.
40 y.	18 y. 10 m.	22 y. 10 m.	16 y.	19 y. 2 m.

\*Average time to 1st release calculated based on DOC statistics 1990 - 1997  
& using DOC categories of offense type.

**Appendix E**  
**Wisconsin Sentencing Guidelines Worksheet**  
**BURGLARY Wis. Stat. § 943.10(1)**

Offender's Last Name : _____		First Name: _____		M.I.: _____	Sex: M ? F ?
Case No. : _____	County: _____	Sentencing Judge: _____		Sentencing Date: __/__/__	
Date of Birth: __/__/__	Date of Offense: __/__/__	Custody at Sentence: Yes ? No ?	Employed at Time of Offense: Yes ? No ?		
Race: White ?	Black ?	Native American ?	Hispanic ?	Asian ?	Other ? _____
Trial to: Judge ?	Jury ?	Plea: Guilty ?	No Contest ?	Alford ?	

**I- Offense Severity Assessment**

A-Determine factors affecting severity of the burglary:

- \_\_\_ Type of premises burgled \_\_\_\_\_
- \_\_\_ Crime intended upon entry, if known \_\_\_\_\_
- \_\_\_ Defendant abandoned burglary. *See Notes.*
- \_\_\_ Other \_\_\_\_\_

B-Assess harm caused by the offense:

- Consider the victim's statement and needs and impact of crime on victim.
- \_\_\_ Offender targeted vulnerable victim.
- \_\_\_ Victim suffered bodily harm; \_\_\_ Victim otherwise harmed. How? \_\_\_\_\_
- \_\_\_ Vulnerable victim.
- \_\_\_ Other. *See Notes.* \_\_\_\_\_

C-Assess the offender's role in the offense. If more than one offender, determine:

- \_\_\_ Leader or organizer of criminal activity.
- \_\_\_ Involvement manipulated or pressured (but less than statutory coercion).
- \_\_\_ Minimal role.
- \_\_\_ Other \_\_\_\_\_

D- Statutory aggravating factors and penalty enhancers:

- Statutory aggravating factors. *See Stat. §973.017 and Notes.*
- \_\_\_ Committed in association with gang.
- \_\_\_ Concealed, disguised, altered appearance to hinder identification.
- \_\_\_ Wore a bulletproof garment.
- \_\_\_ Other \_\_\_\_\_

Penalty enhancers:	Pleaded and proved	Uncharged/Dismissed
Dangerous weapon Stat. §939.63. Identify weapon _____ [assuming agg. burglary NOT charged §943.10(2)(a) and (b)].	<input type="checkbox"/>	<input type="checkbox"/>
Hate crime Stat. §939.645.	<input type="checkbox"/>	<input type="checkbox"/>
Other _____	<input type="checkbox"/>	<input type="checkbox"/>

E-Other factors related to offense severity:

- \_\_\_ Defendant abused a position of trust or authority.
- \_\_\_ Conduct reflects more serious conduct than offense of conviction.
- \_\_\_ Other \_\_\_\_\_

**II-Risk Assessment Evaluation**

Determine the defendant's risk to public safety or to re-offend. *See Notes Section II.*

Consider the nature of the risk that the defendant poses and conditions necessary to reduce risk.

A-Factors that may suggest heightened/lesser risk:

- |   |  |
|---|--|
| ___ Previous acts (whether or not convictions/adjudications). | ___ Age.                               |
| ___ Employment history.                                       | ___ Physical condition.                |
| ___ Mental health.  | ___ Mental health treatment/counseling |
| ___ Dependence on controlled substances.                      | ___ Drug treatment.                    |
| ___ Dependence on alcohol.                                    | ___ Alcohol treatment.                 |
| ___ Performance on bail.                                      | ___ Other _____                        |

B-List (or attach) all convictions and/or juvenile adjudications including year and offense:




## C-Criminal History.

In assessing criminal history consider whether it overstates or understates future risk to public safety.

Juvenile adjudications for acts that are crimes if committed by an adult should ordinarily be treated the same as criminal convictions. *See Notes Section II-C for definition of violent offense, treatment of juvenile offenses and legal status.*

Assess criminal history with caution. Consider whether it fairly reflects risk to public safety or to re-offend.

Consider if applicable:

\_\_Convictions old; \_\_Multiple convictions same as (or similar to) previous offenses.

\_\_Other circumstances indicate conviction/adjudication an inappropriate indicator of risk.

### 1-See Notes Section II-C-1:

\_\_Defendant not on legal status at time of the offense.

\_\_No criminal/juvenile history, particularly if defendant is older.

Earlier convictions/adjudications for:

\_\_Non-violent misdemeanors.

\_\_One non-violent felony.

### 2-See Notes Section II-C-2:

\_\_Present offense is non-violent felony committed while the defendant on legal status.

Earlier convictions/adjudications for:

\_\_Present offense same as (or similar to) previous offense.

\_\_Two or three non-violent felonies.

\_\_Two or three violent misdemeanors.

\_\_One violent felony.

### 3-See Notes Section II-C-3:

\_\_Present offense is violent felony committed while defendant on legal status.

Earlier convictions/adjudications for:

\_\_Two or more offenses same as (or similar to) previous offense.

\_\_Four or more non-violent felonies.

\_\_Two or more violent felonies.

\_\_Four or more violent misdemeanors.

## III-Burglary Chart

Percent of all offenders placed on probation for this offense (1994 – 1998): \_\_\_\_\_

Risk Assessment			
Offense Severity	Lesser	Medium	High
	Probation <input type="checkbox"/>	Probation to <input type="checkbox"/> 2 Years Prison	1 Year Prison to <input type="checkbox"/> 4 Years Prison
	Probation to <input type="checkbox"/> 2 Years Prison	Probation to <input type="checkbox"/> 4 Years Prison	3 Years Prison to <input type="checkbox"/> 5 Years Prison
	Probation to <input type="checkbox"/> 4 Years Prison	2 Years Prison to <input type="checkbox"/> 5 Years Prison	5 Years Prison to <input type="checkbox"/> 7.5 Years Prison

Check the cell reflecting correct offense severity and risk assessment.

**-A Period of Extended Supervision must be assigned in all sentences;**

**that period must be at least 25% of the prison component of the bifurcated sentence.**

## IV-Adjustments to Sentence Indicated by Chart

A-Punishment in the form of incarceration needed. \_\_ Yes \_\_ No. If yes, state reasons orally.

B-Additional factors may warrant adjustment of the indicated sentence.

\_\_Read-in offenses.

\_\_Effect of multiple counts.

\_\_District Attorney/defense attorney recommendation.

\_\_Restitution paid at great sacrifice before sentencing.

\_\_Acceptance of responsibility.

\_\_Cooperation with authorities.

\_\_Habitual criminality.

\_\_Other \_\_\_\_\_

## V-Imposition of Sentence

If any, state conditions in addition to standard conditions of E.S./probation imposed to reduce risk to public safety.

State if defendant eligible for boot camp.

**Wisconsin Sentencing Guidelines Worksheet**  
**1<sup>st</sup> DEGREE SEXUAL ASSAULT OF A CHILD Wis. Stat. § 948.02(1)**

Offender's Last Name : _____		First Name: _____		M.I.: _____	Sex: M ? F ?
Case No. : _____	County: _____	Sentencing Judge: _____		Sentencing Date: __/__/__	
Date of Birth: __/__/__	Date of Offense: __/__/__	Custody at Sentence: Yes ? No ?	Employed at Time of Offense: Yes ? No ?		
Race: White ?	Black ?	Native American ?	Hispanic ?	Asian ?	Other ? _____
Trial to: Judge ? Jury ?		Plea: Guilty ? No Contest ? Alford ?			

**I- Offense Severity Assessment**

A-Determine factors affecting severity of the first degree sexual assault of a child:

- ☐ Age of victim; ☐ Long period of sexual abuse.
- ☐ Sexual intercourse; ☐ Sexual contact.
- ☐ Bodily harm beyond assault; ☐ Other forms of harm; ☐ Pregnancy.
- ☐ Disease transmitted. State kind of disease \_\_\_\_\_
- ☐ Extreme degree of force; ☐ Threats; ☐ Abduction or restraint of victim; ☐ Degradation of victim; ☐ Other \_\_\_\_\_

B-Assess harm caused by the offense:

- Consider the victim's statement and needs and impact of crime on victim.
- ☐ Offender targeted vulnerable victim.
- ☐ Victim suffered bodily harm; ☐ Victim otherwise harmed. How? \_\_\_\_\_
- ☐ Vulnerable victim.
- ☐ Other. *See Notes.* \_\_\_\_\_

C-Assess the offender's role in the offense. If more than one offender, determine:

- ☐ Leader or organizer of criminal activity.
- ☐ Involvement manipulated or pressured (but less than statutory coercion).
- ☐ Minimal role.
- ☐ Other \_\_\_\_\_

D-Statutory aggravating factors and penalty enhancers:

Statutory aggravating factors. *See Stat. §973.017 and Notes.*

- ☐ Committed in association with gang.
- ☐ Concealed, disguised, altered appearance to hinder identification.
- ☐ Knowing transmission of certain sexually transmitted diseases.
- ☐ Responsible for a child's welfare per Stat. §948.01(3).
- ☐ Other \_\_\_\_\_

Penalty enhancers:

- Dangerous weapon Stat. §939.63. Identify weapon \_\_\_\_\_  
[unless offense charged under §940.225(2)(1)(b)].
- Hate crime Stat. §939.645.
- School zone Stat. §939.632.
- Other \_\_\_\_\_

Pleaded and proved

Uncharged/Dismissed

☐☐☐☐☐☐☐☐

E-Other factors related to offense severity:

- ☐ Defendant abused a position of trust or authority.
- ☐ Conduct reflects more serious conduct than offense of conviction.
- ☐ Other \_\_\_\_\_

**II-Risk Assessment Evaluation**

Determine the defendant's risk to public safety or to re-offend. *See Notes Section II.*

Consider the nature of the risk that the defendant poses and conditions necessary to reduce risk.

A-Factors that may suggest heightened/lesser risk:

- |  |  |
|--|--|
| <input type="checkbox"/> Previous acts (whether or not convictions/adjudications). | <input type="checkbox"/> Age.                                |
| <input type="checkbox"/> Employment history.                                       | <input type="checkbox"/> Physical condition.                 |
| <input type="checkbox"/> Mental health.  | <input type="checkbox"/> Mental health treatment/counseling. |
| <input type="checkbox"/> Dependence on controlled substances.                      | <input type="checkbox"/> Drug treatment.                     |
| <input type="checkbox"/> Dependence on alcohol.                                    | <input type="checkbox"/> Alcohol treatment.                  |
| <input type="checkbox"/> Performance on bail.                                      | <input type="checkbox"/> Other _____                         |

B-List (or attach) all convictions and/or juvenile adjudications including year and offense:


## C-Criminal History:

In assessing criminal history consider whether it overstates or understates future risk to public safety.

Juvenile adjudications for acts that are crimes if committed by an adult should ordinarily be treated the same as criminal convictions. *See Notes Section II-C for definition of violent offense, treatment of juvenile offenses and legal status.*

Assess criminal history with caution. Consider whether it fairly reflects risk to public safety or to re-offend.

Consider if applicable:

\_\_\_ Convictions old; \_\_\_ Multiple convictions same as (or similar to) previous offenses.

\_\_\_ Other circumstances indicate conviction/adjudication an inappropriate indicator of risk.

### 1-See Notes Section II-C-1:

\_\_\_ Defendant not on legal status at time of the offense.

\_\_\_ No criminal/juvenile history, particularly if defendant is older.

Earlier convictions/adjudications for:

\_\_\_ Non-violent misdemeanors.

\_\_\_ One non-violent felony.

### 2-See Notes Section II-C-2:

\_\_\_ Present offense is non-violent felony committed while the defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Present offense same as (or similar to) previous offense.

\_\_\_ Two or three non-violent felonies.

\_\_\_ Two or three violent misdemeanors.

\_\_\_ One violent felony.

### 3-See Notes Section II-C-3:

\_\_\_ Present offense is violent felony committed while defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Two or more offenses same as (or similar to) previous offense.

\_\_\_ Four or more non-violent felonies.

\_\_\_ Two or more violent felonies.

\_\_\_ Four or more violent misdemeanors.

## III-1<sup>st</sup> Degree Sexual Assault of a Child

Percent of all offenders placed on probation for this offense (1994 – 1998): \_\_\_\_\_

### Risk Assessment

Offense Severity	Risk Assessment		
	Lesser	Medium	High
	<b>Mitigated</b>	<b>Intermediate</b>	<b>Aggravated</b>
	Probation to 3 Years Prison <input type="checkbox"/>	Probation to 8 Years Prison <input type="checkbox"/>	5 Years Prison to 20 Years Prison <input type="checkbox"/>
	Probation to 8 Years Prison <input type="checkbox"/>	5 Years Prison to 20 Years Prison <input type="checkbox"/>	10 Years Prison to 25 Years Prison <input type="checkbox"/>
	5 Years Prison to 20 Years Prison <input type="checkbox"/>	10 Years Prison to 25 Years Prison <input type="checkbox"/>	20 Years Prison to 40 Years Prison <input type="checkbox"/>

Check the cell reflecting correct offense severity and risk assessment.

**-A Period of Extended Supervision must be assigned in all sentences;**

**that period must be at least 25% of the prison component of the bifurcated sentence.**

## IV-Adjustments to Sentence Indicated by Chart

A-Punishment in the form of incarceration needed. \_\_\_ Yes \_\_\_ No. If yes, state reasons orally.

B-Additional factors may warrant adjustment of the indicated sentence:

\_\_\_ Read-in offenses.

\_\_\_ Effect of multiple counts.

\_\_\_ District Attorney/defense attorney recommendation.

\_\_\_ Restitution paid at great sacrifice before sentencing.

\_\_\_ Acceptance of responsibility.

\_\_\_ Cooperation with authorities.

\_\_\_ Habitual criminality.

\_\_\_ Other \_\_\_\_\_

## V-Imposition of Sentence

If any, state conditions in addition to standard conditions of E.S./probation imposed to reduce risk to public safety.

State if defendant eligible for boot camp.

**Wisconsin Sentencing Guidelines Worksheet**  
**2<sup>nd</sup> DEGREE SEXUAL ASSAULT OF A CHILD Wis. Stat. § 948.02(2)**

Offender's Last Name : _____		First Name: _____		M.I.: _____	Sex: M ? F ?
Case No. : _____	County: _____	Sentencing Judge: _____		Sentencing Date: __/__/__	
Date of Birth: __/__/__	Date of Offense: __/__/__	Custody at Sentence: Yes ? No ?	Employed at Time of Offense: Yes ? No ?		
Race: White ?	Black ?	Native American ?	Hispanic ?	Asian ?	Other ? _____
Trial to: _____	Judge ?	Jury ?	Plea: Guilty ?	No Contest ?	Alford ?

**I- Offense Severity Assessment**

A-Determine factors affecting severity of the second degree sexual assault of a child:

- \_\_\_ Age of victim; \_\_\_ Long period of sexual abuse; \_\_\_ Defendant and victim close in age.
- \_\_\_ Sexual intercourse; \_\_\_ Sexual contact.
- \_\_\_ Bodily harm beyond assault; \_\_\_ Other forms of harm; \_\_\_ Pregnancy.
- \_\_\_ Disease transmitted, state kind of disease \_\_\_\_\_
- \_\_\_ Extreme degree of force; \_\_\_ Threats; \_\_\_ Abduction or restraint of victim; \_\_\_ Degradation of victim; \_\_\_ Other \_\_\_\_\_

B-Assess harm caused by the offense:

- Consider the victim's statement and needs and impact of crime on victim.
- \_\_\_ Offender targeted vulnerable victim.
- \_\_\_ Victim suffered bodily harm.
- \_\_\_ Victim otherwise harmed. How? \_\_\_\_\_
- \_\_\_ Vulnerable victim.
- \_\_\_ Other. *See Notes.* \_\_\_\_\_

C-Assess the offender's role in the offense. If more than one offender, determine:

- \_\_\_ Leader or organizer of criminal activity.
- \_\_\_ Involvement manipulated or pressured (but less than statutory coercion).
- \_\_\_ Minimal role.
- \_\_\_ Other \_\_\_\_\_

D- Statutory aggravating factors and penalty enhancers.

Statutory aggravating factors. *See Stat. §973.017 and Notes.*

- \_\_\_ Committed in association with gang.
- \_\_\_ Concealed, disguised, altered appearance to hinder identification.
- \_\_\_ Knowing transmission of certain sexually transmitted diseases.
- \_\_\_ Responsible for a child's welfare per Wis. Stat. 948.01(3).
- \_\_\_ Other \_\_\_\_\_

Penalty enhancers:

- Dangerous weapon Stat. §939.63. Identify weapon \_\_\_\_\_  
[unless offense charged under §940.225(2)(1)(b)].
- Hate crime Stat. §939.645.
- School zone Stat. §939.632.
- Other \_\_\_\_\_

Pleaded and proved

Uncharged/Dismissed

□	□
□	□
□	□
□	□

E-Other factors related to offense severity:

- \_\_\_ Defendant abused a position of trust or authority.
- \_\_\_ Conduct reflects more serious conduct than offense of conviction.
- \_\_\_ Other \_\_\_\_\_

**II-Risk Assessment Evaluation**

Determine the defendant's risk to public safety or to re-offend. *See Notes Section II.*

Consider the nature of the risk that the defendant poses and conditions necessary to reduce risk.

A-Factors that may suggest heightened/lesser risk:

- |   |   |
|---|---|
| ___ Previous acts (whether or not convictions/adjudications). | ___ Age.                                |
| ___ Employment history.                                       | ___ Physical condition.                 |
| ___ Mental health.  | ___ Mental health treatment/counseling. |
| ___ Dependence on controlled substances.                      | ___ Drug treatment.                     |
| ___ Dependence on alcohol.                                    | ___ Alcohol treatment.                  |
| ___ Performance on bail.                                      | ___ Other _____                         |

B-List (or attach) all convictions and/or juvenile adjudications including year and offense:


## C-Criminal History.

In assessing criminal history consider whether it overstates or understates future risk to public safety.

Juvenile adjudications for acts that are crimes if committed by an adult should ordinarily be treated the same as criminal convictions. *See Notes Section II-C for definition of violent offenses, treatment of juvenile offense, and legal status.*

Assess criminal history with caution. Consider whether it fairly reflects risk to public safety or to re-offend.

Consider if applicable:

\_\_\_ Convictions old; \_\_\_ Multiple convictions same as (or similar to) previous offenses.

\_\_\_ Other circumstances indicate conviction/adjudication an inappropriate indicator of risk.

### 1-See Notes Section II-C-1:

\_\_\_ Defendant not on legal status at time of the offense.

\_\_\_ No criminal/juvenile history, particularly if defendant is older.

Earlier convictions/adjudications for:

\_\_\_ Non-violent misdemeanors.

\_\_\_ One non-violent felony.

### 2-See Notes Section II-C-2:

\_\_\_ Present offense is non-violent felony committed while the defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Present offense same as (or similar to) previous offense.

\_\_\_ Two or three non-violent felonies.

\_\_\_ Two or three violent misdemeanors.

\_\_\_ One violent felony.

### 3-See Notes Section II-C-3:

\_\_\_ Present offense is violent felony committed while defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Two or more offenses same as (or similar to) previous offense.

\_\_\_ Four or more non-violent felonies.

\_\_\_ Two or more violent felonies.

\_\_\_ Four or more violent misdemeanors.

## III-2<sup>nd</sup> Degree Sexual Assault of a Child Chart

Percent of all offenders placed on probation for this offense (1994 – 1998): \_\_\_\_\_

Risk Assessment			
Offense Severity	Lesser	Medium	High
	Probation to <input type="checkbox"/> 2.5 Years Prison	Probation to <input type="checkbox"/> 5 Years Prison	3 Years Prison to <input type="checkbox"/> 12 Years Prison
	Probation to <input type="checkbox"/> 5 Years Prison	3 Years Prison to <input type="checkbox"/> 12 Years Prison	8 Years Prison to <input type="checkbox"/> 20 Years Prison
	3 Years Prison to <input type="checkbox"/> 12 Years Prison	8 Years Prison to <input type="checkbox"/> 20 Years Prison	15 Years Prison to <input type="checkbox"/> 25 Years Prison

Check the cell reflecting correct offense severity and risk assessment.

**-A Period of Extended Supervision must be assigned in all sentences;**

**that period must be at least 25% of the prison component of the bifurcated sentence.**

## IV-Adjustments to Sentence Indicated by Chart

A-Punishment in the form of incarceration needed. \_\_\_ Yes \_\_\_ No. If yes, state reasons orally.

B-Additional factors may warrant adjustment of the indicated sentence.

\_\_\_ Read-in offenses.

\_\_\_ Effect of multiple counts.

\_\_\_ District Attorney/defense attorney recommendation.

\_\_\_ Restitution paid at great sacrifice before sentencing.

\_\_\_ Acceptance of responsibility.

\_\_\_ Cooperation with authorities.

\_\_\_ Habitual criminality.

\_\_\_ Other \_\_\_\_\_

## V-Imposition of sentence

If any, state conditions in addition to standard conditions of E.S./probation imposed to reduce risk to public safety.

State if defendant eligible for boot camp.

**Wisconsin Sentencing Guidelines Worksheet**  
**1<sup>st</sup> DEGREE SEXUAL ASSAULT Wis. Stat. § 940.225(1)**

Offender's Last Name : _____		First Name: _____		M.I.: _____	Sex: M ? F ?
Case No. : _____	County: _____	Sentencing Judge: _____		Sentencing Date: __/__/__	
Date of Birth: __/__/__	Date of Offense: __/__/__	Custody at Sentence: Yes ? No ?	Employed at Time of Offense: Yes ? No ?		
Race: White ?	Black ?	Native American ?	Hispanic ?	Asian ?	Other ? _____
Trial to: Judge ? Jury ?		Plea: Guilty ? No Contest ? Alford ?			

**I- Offense Severity Assessment**

A-Determine factors affecting severity of the first degree sexual assault:

- ☐ Sexual intercourse; ☐ Sexual contact.
- ☐ Bodily harm beyond assault; ☐ Other forms of harm; ☐ Pregnancy.
- ☐ Disease transmitted. State kind of disease \_\_\_\_\_
- ☐ Extreme degree of force; ☐ Threats; ☐ Abduction or restraint of victim; ☐ Degradation of victim; ☐ Other \_\_\_\_\_

B-Assess harm caused by the offense:

- Consider the victim's statement and needs and impact of crime on victim.
- ☐ Offender targeted vulnerable victim.
- ☐ Victim suffered bodily harm.
- ☐ Victim otherwise harmed. How? \_\_\_\_\_
- ☐ Vulnerable victim.
- ☐ Other. *See Notes.* \_\_\_\_\_

C-Assess the offender's role in the offense. If more than one offender, determine:

- ☐ Leader or organizer of criminal activity.
- ☐ Involvement manipulated or pressured (but less than statutory coercion).
- ☐ Minimal role.
- ☐ Other \_\_\_\_\_

D- Statutory aggravating factors and penalty enhancers.

Statutory aggravating factors. *See Stat. §973.017 and Notes.*

- ☐ Committed against an elder (62 or over) person.
- ☐ Committed in association with a gang.
- ☐ Concealed, disguised, altered appearance to hinder identification.
- ☐ Knowing transmission of certain sexually transmitted diseases.
- ☐ Other \_\_\_\_\_

Penalty enhancers:

- Dangerous weapon Stat. §939.63. Identify weapon \_\_\_\_\_  
[unless offense charged under §940.225(2)(1)(b)].
- Hate crime Stat. §939.645.
- School zone Stat. §939.632.
- Domestic abuse Stat. §939.621.
- Other \_\_\_\_\_

Pleaded and proved

Uncharged/Dismissed

☐☐☐☐☐☐☐☐☐☐

E-Other factors related to offense severity:

- ☐ Defendant abused a position of trust or authority.
- ☐ Conduct reflects more serious conduct than offense of conviction.
- ☐ Other \_\_\_\_\_

**II-Risk Assessment Evaluation**

Determine the defendant's risk to public safety or to re-offend. *See Notes Section II.*

Consider the nature of the risk that the defendant poses and conditions necessary to reduce risk.

A-Factors that may suggest heightened/lesser risk:

- |  |  |
|--|--|
| <input type="checkbox"/> Previous acts (whether or not convictions/adjudications). | <input type="checkbox"/> Age.                                |
| <input type="checkbox"/> Employment history.                                       | <input type="checkbox"/> Physical condition.                 |
| <input type="checkbox"/> Mental health.  | <input type="checkbox"/> Mental health treatment/counseling. |
| <input type="checkbox"/> Dependence on controlled substances.                      | <input type="checkbox"/> Drug treatment.                     |
| <input type="checkbox"/> Dependence on alcohol.                                    | <input type="checkbox"/> Alcohol treatment.                  |
| <input type="checkbox"/> Performance on bail.                                      | <input type="checkbox"/> Other _____                         |

B-List (or attach) all convictions and/or juvenile adjudications including year and offense:


## C-Criminal History.

In assessing criminal history consider whether it overstates or understates future risk to public safety.

Juvenile adjudications for acts that are crimes if committed by an adult should ordinarily be treated the same as criminal convictions. *See Notes Section II-C for definition of violent offense, treatment of juvenile offense, and legal status.*

Assess criminal history with caution. Consider whether it fairly reflects risk to public safety or to re-offend.

Consider if applicable:

\_\_\_ Convictions old; \_\_\_ Multiple convictions same as (or similar to) previous offenses.

\_\_\_ Other circumstances indicate conviction/adjudication an inappropriate indicator of risk.

### 1-See Notes Section II-C-1:

\_\_\_ Defendant not on legal status at time of the offense.

\_\_\_ No criminal/juvenile history, particularly if defendant is older.

Earlier convictions/adjudications for:

\_\_\_ Non-violent misdemeanors.

\_\_\_ One non-violent felony.

### 2-See Notes Section II-C-2:

\_\_\_ Present offense is non-violent felony committed while the defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Present offense same as (or similar to) previous offense.

\_\_\_ Two or three non-violent felonies.

\_\_\_ Two or three violent misdemeanors.

\_\_\_ One violent felony.

### 3-See Notes Section II-C-3:

\_\_\_ Present offense is violent felony committed while defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Two or more offenses same as (or similar to) previous offense.

\_\_\_ Four or more non-violent felonies.

\_\_\_ Two or more violent felonies.

\_\_\_ Four or more violent misdemeanors.

## III-1<sup>st</sup> Degree Sexual Assault Chart

Percent of all offenders placed on probation for this offense (1994 – 1998): \_\_\_\_\_

		Risk Assessment		
		Lesser	Medium	High
Offense Severity	Mitigated	Probation to <input type="checkbox"/> 6 Years Prison	5 Years Prison to <input type="checkbox"/> 12 Years Prison	10 Years Prison to <input type="checkbox"/> 20 Years Prison
	Intermediate	5 Years Prison to <input type="checkbox"/> 12 Years Prison	10 Years Prison to <input type="checkbox"/> 20 Years Prison	15 Years Prison to <input type="checkbox"/> 30 Years Prison
	Aggravated	10 Years Prison to <input type="checkbox"/> 20 Years Prison	15 Years Prison to <input type="checkbox"/> 25 Years Prison	25 Years Prison to <input type="checkbox"/> 40 Years Prison

Check the cell reflecting correct offense severity and risk assessment.

**-A Period of Extended Supervision must be assigned in all sentences;**

**that period must be at least 25% of the prison component of the bifurcated sentence.**

## IV-Adjustments to Sentence Indicated by Chart

A-Punishment in the form of incarceration needed. \_\_\_ Yes \_\_\_ No. If yes, state reasons orally.

B-Additional factors may warrant adjustment of the indicated sentence.

\_\_\_ Read-in offenses.

\_\_\_ Effect of multiple counts.

\_\_\_ District Attorney/defense attorney recommendation.

\_\_\_ Restitution paid at great sacrifice before sentencing.

\_\_\_ Acceptance of responsibility.

\_\_\_ Cooperation with authorities.

\_\_\_ Habitual criminality

\_\_\_ Other \_\_\_\_\_

## V-Imposition of Sentence

If any, state conditions in addition to standard conditions of E.S./probation imposed to reduce risk to public safety.

State if defendant eligible for boot camp.

**Wisconsin Sentencing Guidelines Worksheet**  
**2<sup>nd</sup> DEGREE SEXUAL ASSAULT Wis. Stat. § 940.225(2)**

Offender's Last Name : _____		First Name: _____		M.I.: _____	Sex: M ? F ?
Case No. : _____	County: _____	Sentencing Judge: _____		Sentencing Date: __/__/__	
Date of Birth: __/__/__	Date of Offense: __/__/__	Custody at Sentence: Yes ? No ?	Employed at Time of Offense: Yes ? No ?		
Race: White ?	Black ?	Native American ?	Hispanic ?	Asian ?	Other ? _____
Trial to: Judge ? Jury ?		Plea: Guilty ? No Contest ? Alford ?			

**I- Offense Severity Assessment**

A-Determine factors affecting severity of the second degree sexual assault:

- ☐ Sexual intercourse; ☐ Sexual contact.
- ☐ Bodily harm beyond assault; ☐ Other forms of harm; ☐ Pregnancy.
- ☐ Disease transmitted. State kind of disease \_\_\_\_\_
- ☐ Extreme degree of force; ☐ Threats; ☐ Abduction or restraint of victim; ☐ Degradation of victim; ☐ Other \_\_\_\_\_

B-Assess harm caused by the offense:

Consider the victim's statement and needs and impact of crime on victim.

- ☐ Offender targeted vulnerable victim.
- ☐ Victim suffered bodily harm.
- ☐ Victim otherwise harmed. How? \_\_\_\_\_
- ☐ Vulnerable victim.
- ☐ Other. *See Notes.* \_\_\_\_\_

C-Assess the offender's role in the offense. If more than one offender, determine:

- ☐ Leader or organizer of criminal activity.
- ☐ Involvement manipulated or pressured (but less than statutory coercion).
- ☐ Minimal role
- ☐ Other \_\_\_\_\_

D- Statutory aggravating factors and penalty enhancers.

Statutory aggravating factors. *See Stat. §973.017 and Notes.*

- ☐ Committed against an elder (62 or over) person.
- ☐ Committed in connection with a gang.
- ☐ Concealed, disguised, altered appearance to hinder identification.
- ☐ Wore a bulletproof garment.
- ☐ Knowing transmission of certain sexually transmitted diseases.
- ☐ Other \_\_\_\_\_

Penalty enhancers:

- Dangerous weapon Stat. §939.63. Identify weapon \_\_\_\_\_  
[unless offense charged under §940.225(2)(1)(b)].
- Hate crime Stat. §939.645.
- School zone Stat. §939.632.
- Domestic abuse Stat. §939.621.
- Other \_\_\_\_\_

Pleaded and proved

Uncharged/Dismissed

☐☐☐☐☐☐☐☐☐☐

E-Other factors related to offense severity:

- ☐ Defendant abused a position of trust or authority.
- ☐ Conduct reflects more serious conduct than offense of conviction.
- ☐ Other \_\_\_\_\_

**II-Risk Assessment Evaluation**

Determine the defendant's risk to public safety or to re-offend. *See Notes Section II.*

Consider the nature of the risk that the defendant poses and conditions necessary to reduce risk.

A-Factors that may suggest heightened/lesser risk:

- |  |  |
|--|--|
| <input type="checkbox"/> Previous acts (whether or not convictions/adjudications). | <input type="checkbox"/> Age.                                |
| <input type="checkbox"/> Employment history.                                       | <input type="checkbox"/> Physical condition.                 |
| <input type="checkbox"/> Mental health.  | <input type="checkbox"/> Mental health treatment/counseling. |
| <input type="checkbox"/> Dependence on controlled substances.                      | <input type="checkbox"/> Drug treatment.                     |
| <input type="checkbox"/> Dependence on alcohol                                     | <input type="checkbox"/> Alcohol treatment.                  |
| <input type="checkbox"/> Performance on bail.                                      | <input type="checkbox"/> Other _____                         |

B-List (or attach) all convictions and/or juvenile adjudications including year and offense:

\_\_\_\_\_



## C-Criminal History.

In assessing criminal history consider whether it overstates or understates future risk to public safety.

Juvenile adjudications for acts that are crimes if committed by an adult should ordinarily be treated the same as criminal convictions. *See Notes Section II-C for definition of violent offense, treatment of juvenile offenses and legal status.*

Assess criminal history with caution. Consider whether it fairly reflects risk to public safety or to re-offend.

Consider if applicable:

\_\_\_ Convictions old; \_\_\_ Multiple convictions same as (or similar to) previous offenses.

\_\_\_ Other circumstances indicate conviction/adjudication an inappropriate indicator of risk.

### 1-See Notes Section II-C-1:

\_\_\_ Defendant not on legal status at time of the offense.

\_\_\_ No criminal/juvenile history, particularly if defendant is older.

Earlier convictions/adjudications for:

\_\_\_ Non-violent misdemeanors.

\_\_\_ One non-violent felony.

### 2-See Notes Section II-C-2:

\_\_\_ Present offense is non-violent felony committed while the defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Present offense same as (or similar to) previous offense.

\_\_\_ Two or three non-violent felonies.

\_\_\_ Two or three violent misdemeanors.

\_\_\_ One violent felony.

### 3-See Notes Section II-C-3:

\_\_\_ Present offense is violent felony committed while defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Two or more offenses same as (or similar to) previous offense.

\_\_\_ Four or more non-violent felonies.

\_\_\_ Two or more violent felonies.

\_\_\_ Four or more violent misdemeanors.

## III-2<sup>nd</sup> Degree Sexual Assault Chart

Percent of all offenders placed on probation for this offense (1994 – 1998): \_\_\_\_\_

Risk Assessment			
Offense Severity	Lesser	Medium	High
	Probation to <input type="checkbox"/> 3 Years Prison	1 Years Prison to <input type="checkbox"/> 7 Years Prison	5 Years Prison to <input type="checkbox"/> 14 Years Prison
	1 Year Prison to <input type="checkbox"/> 7 Years Prison	5 Years Prison to <input type="checkbox"/> 14 Years Prison	10 Years Prison to <input type="checkbox"/> 20 Years Prison
	5 Years Prison to <input type="checkbox"/> 14 Years Prison	10 Years Prison to <input type="checkbox"/> 20 Years Prison	15 Years Prison to <input type="checkbox"/> 25 Years Prison

Check the cell reflecting correct offense severity and risk assessment.

**-A Period of Extended Supervision must be assigned in all sentences;**

**that period must be at least 25% of the prison component of the bifurcated sentence.**

## IV-Adjustments to Sentence Indicated by Chart

A-Punishment in the form of incarceration needed. \_\_\_ Yes \_\_\_ No. If yes, state reasons orally.

B-Additional factors may warrant adjustment of the indicated sentence.

\_\_\_ Read-in offenses.

\_\_\_ Effect of multiple counts.

\_\_\_ District Attorney/defense attorney recommendation.

\_\_\_ Restitution paid at great sacrifice before sentencing.

\_\_\_ Acceptance of responsibility.

\_\_\_ Cooperation with authorities.

\_\_\_ Habitual criminality

\_\_\_ Other \_\_\_\_\_

## V-Imposition of Sentence

If any, state conditions in addition to standard conditions of E.S./probation imposed to reduce risk to public safety.

State if defendant eligible for boot camp.

**Wisconsin Sentencing Guidelines Worksheet**  
**ARMED ROBBERY Wis. Stat. § 943.32(2)**

Offender's Last Name : _____		First Name: _____		M.I.: _____	Sex: M ? F ?
Case No. : _____	County: _____	Sentencing Judge: _____		Sentencing Date: __/__/__	
Date of Birth: __/__/__	Date of Offense: __/__/__	Custody at Sentence: Yes ? No ?		Employed at Time of Offense: Yes ? No ?	
Race: White ?	Black ?	Native American ?	Hispanic ?	Asian ?	Other ? _____
Trial to: Judge ? Jury ?		Plea: Guilty ? No Contest ?		Alford ?	

**I- Offense Severity Assessment**

A-Determine factors affecting severity of the armed robbery:

- ☐ Extreme degree of force.
- ☐ Threats.
- ☐ Abduction or restraint of victim.

B-Assess harm caused by the offense:

- Consider the victim's statement and needs and impact of crime on victim.
- ☐ Offender targeted vulnerable victim.
  - ☐ Victim suffered bodily harm ☐ Victim otherwise harmed. How? \_\_\_\_\_
  - ☐ Vulnerable victim.
  - ☐ Other. *See Notes.* \_\_\_\_\_

C-Assess the offender's role in the offense. If more than one offender, determine:

- ☐ Leader or organizer of criminal activity.
- ☐ Involvement manipulated or pressured (but less than statutory coercion).
- ☐ Minimal role.
- ☐ Other \_\_\_\_\_

D- Statutory aggravating factors and penalty enhancers.

Statutory aggravating factors. *See Stat. §973.017 and Notes.*

- ☐ Committed against an elder (62 or over) person.
- ☐ Committed in connection with a gang.
- ☐ Concealed, disguised, altered appearance to hinder identification.
- ☐ Wore a bulletproof garment.
- ☐ Other \_\_\_\_\_

Penalty enhancers:

- Hate crime Stat. §939.645.
- School zone Stat. §939.632.
- Other \_\_\_\_\_

Pleaded and proved

Uncharged/Dismissed

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

E-Other factors related to offense severity:

- ☐ Defendant abused a position of trust or authority.
- ☐ Conduct reflects more serious conduct than offense of conviction.
- ☐ Other \_\_\_\_\_

**II-Risk Assessment Evaluation**

Determine the defendant's risk to public safety or to re-offend. *See Notes Section II.*

Consider the nature of the risk that the defendant poses and conditions necessary to reduce risk.

A-Factors that may suggest heightened/lesser risk:

- |  |  |
|--|--|
| <input type="checkbox"/> Previous acts (whether or not convictions/adjudications). | <input type="checkbox"/> Age.                                |
| <input type="checkbox"/> Employment history.                                       | <input type="checkbox"/> Physical condition.                 |
| <input type="checkbox"/> Mental health.  | <input type="checkbox"/> Mental health treatment/counseling. |
| <input type="checkbox"/> Dependence on controlled substances.                      | <input type="checkbox"/> Drug treatment.                     |
| <input type="checkbox"/> Dependence on alcohol.                                    | <input type="checkbox"/> Alcohol treatment.                  |
| <input type="checkbox"/> Performance on bail.                                      | <input type="checkbox"/> Other _____                         |

B-List (or attach) all convictions and/or juvenile adjudications including year and offense:


## C-Criminal History.

In assessing criminal history consider whether it overstates or understates future risk to public safety.

Juvenile adjudications for acts that are crimes if committed by an adult should ordinarily be treated the same as criminal convictions. *See Notes Section II-C for definition of violent offense, treatment of juvenile offenses and legal status.*

Assess criminal history with caution. Consider whether it fairly reflects risk to public safety or to re-offend.

Consider if applicable:

\_\_\_ Convictions old; \_\_\_ Multiple convictions same as (or similar to) previous offenses.

\_\_\_ Other circumstances indicate conviction/adjudication an inappropriate indicator of risk.

### 1-See Notes Section II-C-1:

\_\_\_ Defendant not on legal status at time of the offense.

\_\_\_ No criminal/juvenile history, particularly if defendant is older.

Earlier convictions/adjudications for:

\_\_\_ Non-violent misdemeanors.

\_\_\_ One non-violent felony.

### 2-See Notes Section II-C-2:

\_\_\_ Present offense is non-violent felony committed while the defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Present offense same as (or similar to) previous offense.

\_\_\_ Two or three non-violent felonies.

\_\_\_ Two or three violent misdemeanors.

\_\_\_ One violent felony.

### 3-See Notes Section II-C-3:

\_\_\_ Present offense is violent felony committed while defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Two or more offenses same as (or similar to) previous offense.

\_\_\_ Four or more non-violent felonies.

\_\_\_ Two or more violent felonies.

\_\_\_ Four or more violent misdemeanors.

## III-Armed Robbery Chart

Percent of all offenders placed on probation for this offense (1994 – 1998): \_\_\_\_\_

Risk Assessment			
Offense Severity	Lesser	Medium	High
	Probation to <input type="checkbox"/> 3 Years Prison	Probation to <input type="checkbox"/> 6 Years Prison	5 Years Prison to <input type="checkbox"/> 10 Years Prison
	Probation to <input type="checkbox"/> 6 Years Prison	5 Years Prison to <input type="checkbox"/> 10 Years Prison	10 Years Prison to <input type="checkbox"/> 17 Years Prison
	4 Years Prison to <input type="checkbox"/> 10 Years Prison	8 Years Prison to <input type="checkbox"/> 15 Years Prison	15 Years Prison to <input type="checkbox"/> 25 Years Prison

Check the cell reflecting correct offense severity and risk assessment.

**-A Period of Extended Supervision must be assigned in all sentences;**

**that period must be at least 25% of the prison component of the bifurcated sentence.**

## IV-Adjustments to Sentence Indicated by Chart

A-Punishment in the form of incarceration needed. \_\_\_ Yes \_\_\_ No. If yes, state reasons orally.

B-Additional factors may warrant adjustment of the indicated sentence.

\_\_\_ Read-in offenses.

\_\_\_ Effect of multiple counts.

\_\_\_ District Attorney/defense attorney recommendation.

\_\_\_ Restitution paid at great sacrifice before sentencing.

\_\_\_ Acceptance of responsibility.

\_\_\_ Cooperation with authorities.

\_\_\_ Habitual criminality.

\_\_\_ Other \_\_\_\_\_

## V-Imposition of Sentence

If any, state conditions in addition to standard conditions of E.S./probation imposed to reduce risk to public safety.

State if defendant eligible for boot camp.

## Wisconsin Sentencing Guidelines Worksheet

**FORGERY Wis. Stat. § 943.38(1)**

**FORGERY UTTERING Wis. Stat. § 943.38(2)**

Offender's Last Name : _____	First Name: _____	M.I.: _____	Sex: M ? F ?
Case No. : _____	County: _____	Sentencing Judge: _____	Sentencing Date: __/__/__
Date of Birth: __/__/__	Date of Offense: __/__/__	Custody at Sentence: Yes ? No ?	Employed at Time of Offense: Yes ? No ?
Race: White ?	Black ?	Native American ?	Hispanic ? Asian ? Other ? _____
Trial to: Judge ? Jury ?	Plea: Guilty ?	No Contest ?	Alford ?

### I- Offense Severity Assessment

A-Determine factors affecting severity of the forgery:

- \_\_ Value of loss.
- \_\_ Degree of planning.
- \_\_ Motive for forgery.

B-Assess harm caused by the offense:

- Consider the victim's statement and needs and impact of crime on victim.
- \_\_ Vulnerable victim; \_\_ Offender targeted vulnerable victim.
- \_\_ Victim suffered bodily harm; \_\_ Victim otherwise harmed. How? \_\_\_\_\_
- \_\_ Other. *See Notes.* \_\_\_\_\_

C-Assess the offender's role in the offense. If more than one offender, determine:

- \_\_ Leader or organizer of criminal activity
- \_\_ Involvement manipulated or pressured (but less than statutory coercion)
- \_\_ Minimal role
- \_\_ Other \_\_\_\_\_

D- Statutory aggravating factors and penalty enhancers:

Statutory aggravating factors. *See Stat. §973.017 and Notes.*

- \_\_ Committed in association with gang.
- \_\_ Concealed, disguised, altered appearance to hinder identification.
- \_\_ Other \_\_\_\_\_

Penalty enhancers:

- Dangerous weapon Stat. §939.63. Identify weapon \_\_\_\_\_
- Hate crime Stat. §939.645.
- Other \_\_\_\_\_

Pleaded and proved

Uncharged/Dismissed

☐  
☐  
☐

☐  
☐  
☐

E-Other factors related to offense severity:

- \_\_ Defendant abused a position of trust or authority.
- \_\_ Conduct reflects more serious conduct than offense of conviction.
- \_\_ Other \_\_\_\_\_

### II-Risk Assessment Evaluation

Determine the defendant's risk to public safety or to re-offend. *See Notes Section II.*

Consider the nature of the risk that the defendant poses and conditions necessary to reduce risk.

A-Factors that may suggest heightened/lesser risk:

- |  |  |
|--|--|
| __ Previous acts (whether or not convictions/adjudications). | __ Age.                                |
| __ Employment history.                                       | __ Physical condition.                 |
| __ Mental health   | __ Mental health treatment/counseling. |
| __ Dependence on controlled substances.                      | __ Drug treatment.                     |
| __ Dependence on alcohol.                                    | __ Alcohol treatment.                  |
| __ Performance on bail.                                      | __ Other _____                         |

B-List (or attach) all convictions and/or juvenile adjudications including year and offense:

_____	_____	_____
_____	_____	_____

## C-Criminal History.

In assessing criminal history consider whether it overstates or understates future risk to public safety.

Juvenile adjudications for acts that are crimes if committed by an adult should ordinarily be treated the same as criminal convictions. *See Notes Section II-C for definition of violent offense, treatment of juvenile offense and legal status.*

Assess criminal history with caution. Consider whether it fairly reflects risk to public safety or to re-offend.

Consider if applicable:

\_\_Convictions old; \_\_Multiple convictions same as (or similar to) previous offenses.

\_\_Other circumstances indicate conviction/adjudication an inappropriate indicator of risk.

### 1-See Notes Section II-C-1:

\_\_Defendant not on legal status at time of the offense.

\_\_No criminal/juvenile history, particularly if defendant is older.

Earlier convictions/adjudications for:

\_\_Non-violent misdemeanors.

\_\_One non-violent felony.

### 2-See Notes Section II-C-2:

\_\_Present offense is non-violent felony committed while the defendant on legal status.

Earlier convictions/adjudications for:

\_\_Present offense same as (or similar to) previous offense.

\_\_Two or three non-violent felonies.

\_\_Two or three violent misdemeanors.

\_\_One violent felony.

### 3-See Notes Section II-C-3:

\_\_Present offense is violent felony committed while defendant on legal status.

Earlier convictions/adjudications for:

\_\_Two or more offenses same as (or similar to) previous offense.

\_\_Four or more non-violent felonies.

\_\_Two or more violent felonies.

\_\_Four or more violent misdemeanors.

## III-Forgery Chart

Percent of all offenders placed on probation for this offense (1994 – 1998): \_\_\_\_\_

Risk Assessment			
Offense Severity	Lesser	Medium	High
	Probation <input type="checkbox"/>	Probation to 1 Year Prison <input type="checkbox"/>	Probation to 2 Years Prison <input type="checkbox"/>
	Probation <input type="checkbox"/>	Probation to 2 Years Prison <input type="checkbox"/>	1 Year Prison to 2.5 Years Prison <input type="checkbox"/>
	Probation to 1.5 Years Prison <input type="checkbox"/>	1 Year Prison to 2.5 Years Prison <input type="checkbox"/>	2 Years Prison to 3 Years Prison <input type="checkbox"/>

Check the cell reflecting correct offense severity and risk assessment.

**-A Period of Extended Supervision must be assigned in all sentences;**

**that period must be at least 25% of the prison component of the bifurcated sentence.**

## IV-Adjustments to Sentence Indicated by Chart

A-Punishment in the form of incarceration needed. \_\_ Yes \_\_ No. If yes, state reasons orally.

B-Additional factors may warrant adjustment of the indicated sentence.

\_\_Read-in offenses.

\_\_Effect of multiple counts.

\_\_District Attorney/defense attorney recommendation.

\_\_Restitution paid at great sacrifice before sentencing.

\_\_Acceptance of responsibility.

\_\_Cooperation with authorities.

\_\_Habitual criminality.

\_\_Other \_\_\_\_\_

## V-Imposition of Sentence

If any, state conditions in addition to standard conditions of E.S./probation imposed to reduce risk to public safety.

State if defendant eligible for boot camp.

## Wisconsin Sentencing Guidelines Worksheet

### POSSESSION WITH INTENT TO DELIVER COCAINE 1g and under Wis. Stat. § 961.41(1)(cm)

Offender's Last Name : \_\_\_\_\_ First Name: \_\_\_\_\_ M.I.: \_\_\_\_\_ Sex: M ? F ?  
Case No. : \_\_\_\_\_ County: \_\_\_\_\_ Sentencing Judge: \_\_\_\_\_ Sentencing Date: \_\_/\_\_/\_\_  
Date of Birth: \_\_/\_\_/\_\_ Date of Offense: \_\_/\_\_/\_\_ Custody at Sentence: Yes ? No ? Employed at Time of Offense: Yes ? No ?  
Race: White ? Black ? Native American ? Hispanic ? Asian ? Other ? \_\_\_\_\_  
Trial to: Judge ? Jury ? Plea: Guilty ? No Contest ? Alford ?

#### I- Offense Severity Assessment

##### A-Determine factors affecting severity of the PID-cocaine:

- \_\_\_ Accommodation possession; \_\_\_ Indicia of profit motive.
- \_\_\_ Presence of: \_\_\_ large amounts of cash, \_\_\_ luxury items.
- \_\_\_ Fortified drug house.

##### B-Assess harm caused by the offense:

- Consider impact of the crime on the community and neighborhood.
- \_\_\_ Impact on the neighborhood tended to increase fear, disorder, a milieu of violence or crime, or to reduce property values.
- \_\_\_ Children or adolescents exposed to the criminal conduct.
- \_\_\_ Defendant possessed drugs with intent to deliver to secure sexual activity from another person.
- \_\_\_ Defendant possessed drugs with intent to deliver to pregnant woman, child, or addict.
- \_\_\_ Other. *See Notes.* \_\_\_\_\_

##### C-Assess the offender's role in the offense. If more than one offender, determine:

- \_\_\_ Leader or organizer of criminal activity.
- \_\_\_ Involvement manipulated or pressured (but less than statutory coercion).
- \_\_\_ Minimal role.
- \_\_\_ Other \_\_\_\_\_

##### D- Statutory aggravating factors and penalty enhancers.

Statutory aggravating factors. *See Stat. §973.017 and Notes.*

- \_\_\_ Committed in association with gang.
- \_\_\_ Distribution to prisoners.
- \_\_\_ Committed on a public transit vehicle.
- \_\_\_ Concealed, disguised, altered appearance to hinder identification.
- \_\_\_ Wore a bulletproof garment.
- \_\_\_ Other \_\_\_\_\_

##### Penalty enhancers:

- Dangerous weapon Stat. §939.63. Identify weapon \_\_\_\_\_
- Distribution to persons under 18 Stat. §961.46.
- Crime within 1,000 feet of school etc. Stat. §961.49.
- Other \_\_\_\_\_

##### Pleaded and proved

##### Uncharged/Dismissed

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

##### E-Other factors related to offense severity:

- \_\_\_ Defendant abused a position of trust or authority.
- \_\_\_ Conduct reflects more serious conduct than offense of conviction.
- \_\_\_ Other \_\_\_\_\_

#### II-Risk Assessment Evaluation

Determine the defendant's risk to public safety or to re-offend. *See Notes Section II.*

Consider the nature of the risk that the defendant poses and conditions necessary to reduce risk.

##### A-Factors that may suggest heightened/lesser risk:

- |   |   |
|---|---|
| ___ Previous acts (whether or not convictions/adjudications). | ___ Age.                                |
| ___ Employment history.                                       | ___ Physical condition.                 |
| ___ Mental health.  | ___ Mental health treatment/counseling. |
| ___ Dependence on controlled substances.                      | ___ Drug treatment.                     |
| ___ Dependence on alcohol.                                    | ___ Alcohol treatment.                  |
| ___ Performance on bail.                                      | ___ Other _____                         |

##### B-List (or attach) all convictions and/or juvenile adjudications including year and offense:

_____	_____	_____
_____	_____	_____

## C-Criminal History.

In assessing criminal history consider whether it overstates or understates future risk to public safety.

Juvenile adjudications for acts that are crimes if committed by an adult should ordinarily be treated the same as criminal convictions. *See Notes Section II-C for definition of violent offenses, treatment of juvenile offenses and legal status.*

Assess criminal history with caution. Consider whether it fairly reflects risk to public safety or to re-offend.

Consider if applicable:

\_\_\_Convictions old; \_\_\_Multiple convictions same as (or similar to) previous offenses.

\_\_\_Other circumstances indicate conviction/adjudication an inappropriate indicator of risk.

### 1-See Notes Section II-C-1:

\_\_\_Defendant not on legal status at time of the offense.

\_\_\_No criminal/juvenile history, particularly if defendant is older.

Earlier convictions/adjudications for:

\_\_\_Non-violent misdemeanors.

\_\_\_One non-violent felony.

### 2-See Notes Section II-C-2:

\_\_\_Present offense is non-violent felony committed while the defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_Present offense same as (or similar to) previous offense.

\_\_\_Two or three non-violent felonies.

\_\_\_Two or three violent misdemeanors.

\_\_\_One violent felony.

### 3-See Notes Section II-C-3:

\_\_\_Present offense is violent felony committed while defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_Two or more offenses same as (or similar to) previous offense.

\_\_\_Four or more non-violent felonies.

\_\_\_Two or more violent felonies.

\_\_\_Four or more violent misdemeanors.

## III-Possession with Intent to Deliver Cocaine Chart

Percent of all offenders placed on probation for this offense (1999 – 1998): \_\_\_\_\_

		Risk Assessment		
		Lesser	Medium	High
Offense Severity	Mitigated	Probation <input type="checkbox"/>	Probation to 1.5 Years Prison <input type="checkbox"/>	1 Year Prison to 3 Years Prison <input type="checkbox"/>
	Intermediate	Probation to 1.5 Years Prison <input type="checkbox"/>	Probation to 2.5 Years Prison <input type="checkbox"/>	2 Years Prison to 4 Years Prison <input type="checkbox"/>
	Aggravated	Probation to 2.5 Years Prison <input type="checkbox"/>	2 Years Prison to 4 Years Prison <input type="checkbox"/>	3 Years Prison to 5 Years Prison <input type="checkbox"/>

Check the cell reflecting correct offense severity and risk assessment.

**-A Period of Extended Supervision must be assigned in all sentences;**

**that period must be at least 25% of the prison component of the bifurcated sentence.**

## IV-Adjustments to Sentence Indicated by Chart

A-Punishment in the form of incarceration needed. \_\_\_ Yes \_\_\_ No. If yes, state reasons orally.

B-Additional factors may warrant adjustment of the indicated sentence.

\_\_\_Read-in offenses.

\_\_\_Effect of multiple counts.

\_\_\_District Attorney/defense attorney recommendation.

\_\_\_Restitution paid at great sacrifice before sentencing.

\_\_\_Acceptance of responsibility.

\_\_\_Cooperation with authorities.

\_\_\_Drug Repeater.

\_\_\_Other \_\_\_\_\_

## V-Imposition of Sentence

If any, state conditions in addition to standard conditions of E.S./probation imposed to reduce risk to public safety.

State if defendant eligible for boot camp.

## Wisconsin Sentencing Guidelines Worksheet

### POSSESSION WITH INTENT TO DELIVER THC 200g to 1,000g Wis. Stat. § 961.41(1m)(h)

Offender's Last Name : \_\_\_\_\_ First Name: \_\_\_\_\_ M.I.: \_\_\_\_\_ Sex: M ? F ?  
Case No. : \_\_\_\_\_ County: \_\_\_\_\_ Sentencing Judge: \_\_\_\_\_ Sentencing Date: \_\_/\_\_/\_\_  
Date of Birth: \_\_/\_\_/\_\_ Date of Offense: \_\_/\_\_/\_\_ Custody at Sentence: Yes ? No ? Employed at Time of Offense: Yes ? No ?  
Race: White ? Black ? Native American ? Hispanic ? Asian ? Other ? \_\_\_\_\_  
Trial to: Judge ? Jury ? Plea: Guilty ? No Contest ? Alford ?

#### I- Offense Severity Assessment

##### A-Determine factors affecting severity of the PID-THC:

- ☐ Accommodation possession; ☐ Indicia of profit motive.
- ☐ Presence of: ☐ large amounts of cash, ☐ luxury items.
- ☐ Fortified drug house.

##### B-Assess harm caused by the offense:

- Consider impact of the crime on the community and neighborhood.
- ☐ Impact on the neighborhood tended to increase fear, disorder, a milieu of violence or crime, or to reduce property values.
- ☐ Children or adolescents exposed to the criminal conduct.
- ☐ Defendant possessed drugs with intent to deliver to secure sexual activity from another person.
- ☐ Defendant possessed drugs with intent to deliver to pregnant woman, child, or addict.
- ☐ Other. *See Notes.* \_\_\_\_\_

##### C-Assess the offender's role in the offense. If more than one offender, determine:

- ☐ Leader or organizer of criminal activity.
- ☐ Involvement manipulated or pressured (but less than statutory coercion).
- ☐ Minimal role.
- ☐ Other \_\_\_\_\_

##### D- Statutory aggravating factors and penalty enhancers.

Statutory aggravating factors. *See Stat. §973.017 and Notes.*

- ☐ Committed in association with gang.
- ☐ Distribution to prisoners.
- ☐ Committed on a public transit vehicle.
- ☐ Concealed, disguised, altered appearance to hinder identification.
- ☐ Wore a bulletproof garment.
- ☐ Other \_\_\_\_\_

##### Penalty enhancers:

- Dangerous weapon Stat. §939.63. Identify weapon \_\_\_\_\_
- Distribution to persons under 18 Stat. §961.46.
- Crime within 1,000 feet of school etc. Stat. §961.49.
- Other \_\_\_\_\_

##### Pleaded and proved

##### Uncharged/Dismissed

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

##### E-Other factors related to offense severity:

- ☐ Defendant abused a position of trust or authority.
- ☐ Conduct reflects more serious conduct than offense of conviction.
- ☐ Other \_\_\_\_\_

#### II-Risk Assessment Evaluation

Determine the defendant's risk to public safety or to re-offend. *See Notes Section II.*

Consider the nature of the risk that the defendant poses and conditions necessary to reduce risk.

##### A-Factors that may suggest heightened/lesser risk:

- |  |  |
|--|--|
| <input type="checkbox"/> Previous acts (whether or not convictions/adjudications). | <input type="checkbox"/> Age.                                |
| <input type="checkbox"/> Employment history.                                       | <input type="checkbox"/> Physical condition.                 |
| <input type="checkbox"/> Mental health.  | <input type="checkbox"/> Mental health treatment/counseling. |
| <input type="checkbox"/> Dependence on controlled substances.                      | <input type="checkbox"/> Drug treatment.                     |
| <input type="checkbox"/> Dependence on alcohol.                                    | <input type="checkbox"/> Alcohol treatment.                  |
| <input type="checkbox"/> Performance on bail.                                      | <input type="checkbox"/> Other _____                         |

##### B-List (or attach) all convictions and/or juvenile adjudications including year and offense:

_____	_____	_____	_____
_____	_____	_____	_____



## C-Criminal History.

In assessing criminal history consider whether it overstates or understates future risk to public safety.

Juvenile adjudications for acts that are crimes if committed by an adult should ordinarily be treated the same as criminal convictions. *See Notes Section II-C for definition of violent offenses, treatment of juvenile offenses, and legal status.*

Assess criminal history with caution. Consider whether it fairly reflects risk to public safety or to re-offend.

Consider if applicable:

\_\_Convictions old; \_\_Multiple convictions same as (or similar to) previous offenses.

\_\_Other circumstances indicate conviction/adjudication an inappropriate indicator of risk.

### 1-See Notes Section II-C-1:

\_\_Defendant not on legal status at time of the offense.

\_\_No criminal/juvenile history, particularly if defendant is older.

Earlier convictions/adjudications for:

\_\_Non-violent misdemeanors.

\_\_One non-violent felony.

### 2-See Notes Section II-C-2:

\_\_Present offense is non-violent felony committed while the defendant on legal status.

Earlier convictions/adjudications for:

\_\_Present offense same as (or similar to) previous offense.

\_\_Two or three non-violent felonies.

\_\_Two or three violent misdemeanors.

\_\_One violent felony.

### 3-See Notes Section II-C-3:

\_\_Present offense is violent felony committed while defendant on legal status.

Earlier convictions/adjudications for:

\_\_Two or more offenses same as (or similar to) previous offense.

\_\_Four or more non-violent felonies.

\_\_Two or more violent felonies.

\_\_Four or more violent misdemeanors.

## III-Possession with Intent to Deliver THC Chart

Percent of all offenders placed on probation for this offense (1994 – 1998): \_\_\_\_\_

Risk Assessment			
Offense Severity	Lesser	Medium	High
	Probation <input type="checkbox"/>	Probation to 1 Year Prison <input type="checkbox"/>	1 Year Prison to 2 Years Prison <input type="checkbox"/>
	Probation to 1 Year Prison <input type="checkbox"/>	Probation to 2 Years Prison <input type="checkbox"/>	1 Year Prison to 2.5 Years Prison <input type="checkbox"/>
	Probation to 2 Years Prison <input type="checkbox"/>	1 Year Prison to 2 Years Prison <input type="checkbox"/>	2 Years Prison to 3 Years Prison <input type="checkbox"/>

Check the cell reflecting correct offense severity and risk assessment.

**-A Period of Extended Supervision must be assigned in all sentences;**

**that period must be at least 25% of the prison component of the bifurcated sentence.**

## IV-Adjustments to Sentence Indicated by Chart

A-Punishment in the form of incarceration needed. \_\_ Yes \_\_ No. If yes, state reasons orally.

B-Additional factors may warrant adjustment of the indicated sentence.

\_\_Read-in offenses.

\_\_Effect of multiple counts.

\_\_District Attorney/defense attorney recommendation.

\_\_Restitution paid at great sacrifice before sentencing.

\_\_Acceptance of responsibility.

\_\_Cooperation with authorities.

\_\_Drug Repeater

\_\_Other \_\_\_\_\_

## V-Imposition of Sentence

If any, state conditions in addition to standard conditions of E.S./probation imposed to reduce risk to public safety.

State if defendant eligible for boot camp.

## Wisconsin Sentencing Guidelines Worksheet

### ROBBERY Wis. Stat. § 943.32(1)

Offender's Last Name : _____	First Name: _____	M.I.: _____	Sex: M ? F ?
Case No. : _____	County: _____	Sentencing Judge: _____	Sentencing Date: __/__/__
Date of Birth: __/__/__	Date of Offense: __/__/__	Custody at Sentence: Yes ? No ?	Employed at Time of Offense: Yes ? No ?
Race: White ?	Black ?	Native American ?	Hispanic ? Asian ? Other ? _____
Trial to: _____	Judge ?	Jury ?	Plea: Guilty ? No Contest ? Alford ?

#### I- Offense Severity Assessment

A-Determine factors affecting severity of the robbery:

- ☐ Extreme degree of force.
- ☐ Threats.
- ☐ Abduction or restraint of victim.

B-Assess harm caused by the offense:

Consider the victim's statement and needs and impact of crime on victim.

- ☐ Vulnerable victim; ☐ Offender targeted vulnerable victim.
- ☐ Victim suffered bodily harm; ☐ Victim otherwise harmed. How? \_\_\_\_\_
- ☐ Other. *See Notes.* \_\_\_\_\_

C-Assess the offender's role in the offense. If more than one offender, determine:

- ☐ Leader or organizer of criminal activity.
- ☐ Involvement manipulated or pressured (but less than statutory coercion).
- ☐ Minimal role
- ☐ Other \_\_\_\_\_

D- Statutory aggravating factors and penalty enhancers.

Statutory aggravating factors. *See Stat. §973.017 and Notes.*

- ☐ Committed against an elder (62 or over) person.
- ☐ Committed in association with a gang.
- ☐ Concealed, disguised, altered appearance to hinder identification.
- ☐ Wore a bulletproof garment.
- ☐ Other \_\_\_\_\_

Penalty enhancer:

- Dangerous weapon Stat. §939.63. Identify weapon \_\_\_\_\_
- Hate crime Stat. §939.645.
- Other \_\_\_\_\_

Pleaded and proved

Uncharged/Dismissed

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

E-Other factors related to offense severity:

- ☐ Defendant abused a position of trust or authority.
- ☐ Conduct reflects more serious conduct than offense of conviction.
- ☐ Other \_\_\_\_\_

#### II-Risk Assessment Evaluation

Determine the defendant's risk to public safety or to re-offend. *See Notes Section II.*

Consider the nature of the risk that the defendant poses and conditions necessary to reduce risk.

A-Factors that may suggest heightened/lesser risk:

- |   |  |
|---|--|
| <input type="checkbox"/> Previous acts (whether or not convictions/adjudications) | <input type="checkbox"/> Age.                                |
| <input type="checkbox"/> Employment history.                                      | <input type="checkbox"/> Physical condition.                 |
| <input type="checkbox"/> Mental health.   | <input type="checkbox"/> Mental health treatment/counseling. |
| <input type="checkbox"/> Dependence on controlled substances.                     | <input type="checkbox"/> Drug treatment.                     |
| <input type="checkbox"/> Dependence on alcohol.                                   | <input type="checkbox"/> Alcohol treatment.                  |
| <input type="checkbox"/> Performance on bail.                                     | <input type="checkbox"/> Other _____                         |

B-List (or attach) all convictions and/or juvenile adjudications including year and offense:

_____	_____	_____
_____	_____	_____

## C-Criminal History.

In assessing criminal history consider whether it overstates or understates future risk to public safety.

Juvenile adjudications for acts that are crimes if committed by an adult should ordinarily be treated the same as criminal convictions. *See Notes Section II-C for definition of violent offenses, treatment of juvenile offenses and legal status.*

Assess criminal history with caution. Consider whether it fairly reflects risk to public safety or to re-offend.

Consider if applicable:

\_\_\_ Convictions old; \_\_\_ Multiple convictions same as (or similar to) previous offenses.

\_\_\_ Other circumstances indicate conviction/adjudication an inappropriate indicator of risk.

### 1-See Notes Section II-C-1:

\_\_\_ Defendant not on legal status at time of the offense.

\_\_\_ No criminal/juvenile history, particularly if defendant is older.

Earlier convictions/adjudications for:

\_\_\_ Non-violent misdemeanors.

\_\_\_ One non-violent felony.

### 2-See Notes Section II-C-2:

\_\_\_ Present offense is non-violent felony committed while the defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Present offense same as (or similar to) previous offense.

\_\_\_ Two or three non-violent felonies.

\_\_\_ Two or three violent misdemeanors.

\_\_\_ One violent felony.

### 3-See Notes Section II-C-3:

\_\_\_ Present offense is violent felony committed while defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Two or more offenses same as (or similar to) previous offense.

\_\_\_ Four or more non-violent felonies.

\_\_\_ Two or more violent felonies.

\_\_\_ Four or more violent misdemeanors.

## III-Robbery Chart

Percent of all offenders placed on probation for this offense (1994 – 1998): \_\_\_\_\_

		Risk Assessment		
		Lesser	Medium	High
Offense Severity	Mitigated	Probation to <input type="checkbox"/> 1.5 Years Prison	Probation to <input type="checkbox"/> 3 Years Prison	2 Years Prison to <input type="checkbox"/> 5 Years Prison
	Intermediate	Probation to <input type="checkbox"/> 3 Years Prison	2 Years Prison to <input type="checkbox"/> 5 Years Prison	3 Years Prison to <input type="checkbox"/> 7.5 Years Prison
	Aggravated	2 Years Prison to <input type="checkbox"/> 5 Years Prison	3 Years Prison to <input type="checkbox"/> 7.5 Years Prison	7 Years Prison to <input type="checkbox"/> 10 Years Prison

Check the cell reflecting correct offense severity and risk assessment.

**-A Period of Extended Supervision must be assigned in all sentences;**

**that period must be at least 25% of the prison component of the bifurcated sentence.**

## IV-Adjustments to Sentence Indicated by Chart

A-Punishment in the form of incarceration needed. \_\_\_ Yes \_\_\_ No. If yes, state reasons orally.

B-Additional factors may warrant adjustment of the indicated sentence.

\_\_\_ Read-in offenses.

\_\_\_ Effect of multiple counts.

\_\_\_ District Attorney/defense attorney recommendation.

\_\_\_ Restitution paid at great sacrifice before sentencing.

\_\_\_ Acceptance of responsibility.

\_\_\_ Cooperation with authorities.

\_\_\_ Habitual criminality.

\_\_\_ Other \_\_\_\_\_

## V-Imposition of Sentence

If any, state conditions in addition to standard conditions of E.S./probation imposed to reduce risk to public safety.

State if defendant eligible for boot camp.

## Wisconsin Sentencing Guidelines Worksheet

### THEFT (>\$10,000) Wis. Stat. § 943.20

Offender's Last Name : _____	First Name: _____	M.I.: _____	Sex: M ? F ?
Case No. : _____	County: _____	Sentencing Judge: _____	Sentencing Date: __/__/__
Date of Birth: __/__/__	Date of Offense: __/__/__	Custody at Sentence: Yes ? No ?	Employed at Time of Offense: Yes ? No ?
Race: White ?	Black ?	Native American ?	Hispanic ? Asian ? Other ? _____
Trial to: Judge ? Jury ?	Plea: Guilty ? No Contest ?	Alford ?	

#### I- Offense Severity Assessment

A-Determine factors affecting severity of the theft:

- \_\_ Value of loss.
- \_\_ Degree of planning.
- \_\_ Motive of forgery.

B-Assess harm caused by the offense:

- Consider the victim's statement and needs and impact of crime on victim.
- \_\_ Vulnerable victim; \_\_ Offender targeted vulnerable victim.
- \_\_ Victim suffered bodily harm; \_\_ Victim otherwise harmed. How? \_\_\_\_\_
- \_\_ Other. *See Notes.* \_\_\_\_\_

C-Assess the offender's role in the offense. If more than one offender, determine:

- \_\_ Leader or organizer of criminal activity.
- \_\_ Involvement manipulated or pressured (but less than statutory coercion).
- \_\_ Minimal role.
- \_\_ Other \_\_\_\_\_

D- Statutory aggravating factors and penalty enhancers.

Statutory aggravating factors. *See Stat. §973.017 and Notes.*

- \_\_ Committed in association with gang.
- \_\_ Concealed, disguised, altered appearance to hinder identification.
- \_\_ Other \_\_\_\_\_

Penalty enhancers:

- Dangerous weapon Stat. §939.63. Identify weapon \_\_\_\_\_
- Hate crime Stat. §939.645.
- Other \_\_\_\_\_

Pleaded and proved      Uncharged/Dismissed

<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

E-Other factors related to offense severity:

- \_\_ Defendant abused a position of trust or authority.
- \_\_ Conduct reflects more serious conduct than offense of conviction.
- \_\_ Other \_\_\_\_\_

#### II-Risk Assessment Evaluation

Determine the defendant's risk to public safety or to re-offend. *See Notes Section II.*

Consider the nature of the risk that the defendant poses and conditions necessary to reduce risk.

A-Factors that may suggest heightened/lesser risk:

- |  |  |
|--|--|
| __ Previous acts (whether or not convictions/adjudications). | __ Age.                                |
| __ Employment history.                                       | __ Physical condition.                 |
| __ Mental health.  | __ Mental health treatment/counseling. |
| __ Dependence on controlled substances.                      | __ Drug treatment.                     |
| __ Dependence on alcohol.                                    | __ Alcohol treatment.                  |
| __ Performance on bail.                                      | __ Other _____                         |

B-List (or attach) all convictions and/or juvenile adjudications including year and offense:

_____	_____	_____
_____	_____	_____

## C-Criminal History.

In assessing criminal history consider whether it overstates or understates future risk to public safety.

Juvenile adjudications for acts that are crimes if committed by an adult should ordinarily be treated the same as criminal convictions. *See Notes Section II-C for definition of violent offenses, treatment of juvenile offenses, and legal status.*

Assess criminal history with caution. Consider whether it fairly reflects risk to public safety or to re-offend.

Consider if applicable:

\_\_\_ Convictions old; \_\_\_ Multiple convictions same as (or similar to) previous offenses.

\_\_\_ Other circumstances indicate conviction/adjudication an inappropriate indicator of risk.

### 1-See Notes Section II-C-1:

\_\_\_ Defendant not on legal status at time of the offense.

\_\_\_ No criminal/juvenile history, particularly if defendant is older.

Earlier convictions/adjudications for:

\_\_\_ Non-violent misdemeanors.

\_\_\_ One non-violent felony.

### 2-See Notes Section II-C-2:

\_\_\_ Present offense is non-violent felony committed while the defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Present offense same as (or similar to) previous offense.

\_\_\_ Two or three non-violent felonies.

\_\_\_ Two or three violent misdemeanors.

\_\_\_ One violent felony.

### 3-See Notes Section II-C-3:

\_\_\_ Present offense is violent felony committed while defendant on legal status.

Earlier convictions/adjudications for:

\_\_\_ Two or more offenses same as (or similar to) previous offense.

\_\_\_ Four or more non-violent felonies.

\_\_\_ Two or more violent felonies.

\_\_\_ Four or more violent misdemeanors.

## III-Theft Chart

Percent of all offenders placed on probation for this offense (1994 – 1998): \_\_\_\_\_

Risk Assessment			
Offense Severity	Lesser	Medium	High
	Probation <input type="checkbox"/>	Probation to 1.5 Years Prison <input type="checkbox"/>	Probation to 3 Years Prison <input type="checkbox"/>
	Intermediate Probation to 1.5 Years Prison <input type="checkbox"/>	Probation to 2.5 Years Prison <input type="checkbox"/>	2 Years Prison to 4 Years Prison <input type="checkbox"/>
	Aggravated Probation to 2 Years Prison <input type="checkbox"/>	1.5 Years Prison to 4 Years Prison <input type="checkbox"/>	3 Years Prison to 5 Years Prison <input type="checkbox"/>

Check the cell reflecting correct offense severity and risk assessment.

**-A Period of Extended Supervision must be assigned in all sentences;**

**that period must be at least 25% of the prison component of the bifurcated sentence.**

## IV-Adjustments to Sentence Indicated by Chart

A-Punishment in the form of incarceration needed. \_\_\_ Yes \_\_\_ No. If yes, state reasons orally.

B-Additional factors may warrant adjustment of the indicated sentence.

\_\_\_ Read-in offenses.

\_\_\_ Effect of multiple counts.

\_\_\_ District Attorney/defense attorney recommendation.

\_\_\_ Restitution paid at great sacrifice before sentencing.

\_\_\_ Acceptance of responsibility.

\_\_\_ Cooperation with authorities.

\_\_\_ Habitual criminality.

\_\_\_ Other \_\_\_\_\_

## V-Imposition of Sentence

If any, state conditions in addition to standard conditions of E.S./probation imposed to reduce risk to public safety.

State if defendant eligible for boot camp.

**Appendix F**

**Wisconsin Sentencing Guidelines**

**Notes**

# **Wisconsin Sentencing Guidelines**

## **Notes**

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# **Wisconsin Sentencing Guidelines**

## **Notes**

### **Introduction**

The Wisconsin Sentencing Guidelines (Guidelines) are advisory, and are to be applied consistent with case law<sup>1</sup> and applicable statutory authority, specifically Wis. Stat. 973.01(1) for the following offenses if committed on or after December 31, 1999:

- first degree sexual assault, Wis. Stat. 940.225 (1)
- second degree sexual assault, Wis. Stat. 940.225 (2)
- first degree child sexual assault, Wis. Stat. 948.02 (1)
- second degree child sexual assault, Wis. Stat. 948.02 (2)
- armed robbery, Wis. Stat. 943.32 (2)
- robbery, Wis. Stat. 943.32 (1)
- burglary, Wis. Stat. 943.10 (1)
- possession with intent to deliver cocaine-1 gram or less,  
[proposed statute Wis. Stat. 961.41 (1m)(cm)1g]
- possession with intent to deliver THC (marijuana)  
200 to 1000 grams  
[proposed statute Wis. Stat. 961.41 (1m) (h) 2]
- theft- more than \$10,000  
[proposed statute Wis. Stat. 943.20(1) and (3)(c)]
- forgery, Wis. Stat. 943.38 (2),  
and forgery uttering Wis. Stat. 943.38(2)

These Guidelines remain effective until the Wisconsin Sentencing Commission (Commission) issues permanent advisory guidelines or otherwise determines.

The Guidelines consist of two parts: the Wisconsin Sentencing Guidelines Worksheets (Worksheets) for each of the offenses listed above and the Wisconsin Sentencing Guidelines Notes (Notes). While the Worksheets and Notes reference many factors frequently considered at sentencing, they are not intended to preclude consideration of additional or alternative factors. Furthermore, since the Guidelines are advisory, and are not intended to replace the traditional exercise of discretion, the sentencing court is not required to address each of the factors listed in the Worksheet, or addressed in the Notes, but is encouraged to weigh all relevant factors. Failure to consider one or more Guidelines factors is not, in and of itself, abuse of discretion. The standard of appellate review is not affected by the Guidelines.

The Worksheets serve a dual purpose. They are designed to guide the sentencing court and the parties at sentencing, and to gather information for the Commission. Since information recorded in the Worksheets may be used in formulating permanent advisory guidelines, the court

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<sup>1</sup> See generally, *Harris v. State*, 75 Wis. 2d 513 (1977); *Bastian v. State*, 54 Wis. 2d 240 (1972); *McCleary v. State*, 49 Wis. 2d 263 (1971). (*these italics in earlier version*)

should record accurately those factors relied upon at sentencing. The Worksheets should not be used in a mechanical fashion inconsistent with the exercise of judicial discretion.

Use of the pronoun “he” in the Notes is a matter of convention and convenience.

### **Worksheet format**

The top portion of each Worksheet contains a box requesting statistical information. This portion should be filled out by the presentence investigation report (PSI) writer or by another person designated by the court in advance of sentencing.

The substantive portion of the Worksheet is divided into five principal sections, which are as follows:

- I-Offense severity level
- II-Risk assessment
- III-Specific offense chart
- IV-Adjustments to indicated sentence
- V-Imposition of sentence

The Guidelines are premised in part on the notion that many, though not all, factors that are appropriate to consider at sentencing are associated primarily with offense severity (the vertical axis of the chart) or risk assessment (the horizontal axis). The concept of offense severity pertains to the character of the offense itself. Offense severity is described as mitigated, intermediate and aggravated. The risk assessment of the horizontal axis refers to the risk to public safety or to re-offend posed by the defendant. Risk assessment is described as lesser, medium or high.

Many of the appropriate considerations necessary to evaluate offense severity and risk are listed in Sections I and II respectively of the Worksheets, and are further described in the corresponding portions of these Notes. After making determinations associated with offense severity and risk, the specific offense chart found at Section III of each Worksheet provides guidance on appropriate sentencing ranges. The Guidelines recognize that some factors, while difficult to identify as directly related to offense severity or future risk, are nevertheless valid sentencing considerations, and may support adjustment of the sentence. These factors are found at Section IV. Finally, Section V refers to the actual imposition of sentence.

## **Notes format**

The Notes are to be used with the Worksheets, defining some terms and enlarging an understanding of the concepts referenced in each Worksheet. The structure of the Notes follows that of the Worksheets. Litigants are encouraged to consult the Notes and to direct the sentencing court's attention to sections that are applicable to a particular case.

## **Section I Offense Severity Assessment**

Section I of the Worksheet addresses issues related to offense severity, the vertical axis of the Guidelines chart. In assessing offense severity, the court evaluates the gravity of the offense that the defendant committed, and determines whether the offense should be treated as mitigated, intermediate or aggravated. This may include weighing various factors, such as the character of the act itself, its actual or intended impact upon the victim and the community, the defendant's role in the offense, and other factors. *The offense severity axis of the sentencing chart reflects the need for punishment based on the wrongfulness of the defendant's conduct.*

Section I-A pertains to factors associated with individual offenses, and is different for each offense. Sections I-C to I-E refer to factors that are generally relevant to most offenses.

### **Section I-A Determine factors affecting the severity of the specific statutory offense**

Consult the specific offense section below:

#### **Sexual offenses**

Worksheets are available for four sexual offenses: first and second sexual assault and first and second-degree sexual assault of a child. The following portion of the Notes discusses factors that may be relevant to these offenses. In some respects, the factors the court should consider in imposing sentence on these four offenses are similar. These offenses all involve a sexual assault, which involves consideration of the harm suffered by the victim. Of course, some factors are quite different. Depending on the circumstances of a particular case, the court may find that a factor discussed in the Notes in connection with one form of sexual assault is applicable to another form, and may rely on it in assessing offense severity.

#### **First degree sexual assault Wis. Stat. 940.225 (1)**

To assess offense severity, the court should consider the nature of the assault itself. The offense of first degree sexual assault encompasses a range of conduct from sexual contact to sexual intercourse. The court should examine the nature of the conduct itself to determine the nature of the assault. Ordinarily, touching the victim over clothing is considered a less aggravated form of this offense than sexual intercourse. In evaluating the character of this offense, the court may consider the duration of the assault, and whether it involved multiple acts, even if only one count was charged.

In evaluating the severity of this offense, the sentencing court should also consider:

- bodily harm beyond the assault itself
- other forms of harm
- transmission of disease, and the actual disease transmitted
- pregnancy
- the degree of force used
- threats to the victim
- abduction or restraint of the victim
- location of the assault
- the kind of weapon involved, if any, and the manner in which it was used
- degradation of the victim

With respect to the use of a weapon, the sentencing court may consider the nature of the weapon, and the manner in which it was used. Factors associated with the character of the weapon, and the use to which it was put, may be considered to increase or decrease offense severity. However, the mere use of a weapon, without further analysis, may not be treated as a factor that increases offense severity in any offense where the use of the weapon is an element of the offense. This is so because in those circumstances the use of the weapon is already accounted for in the Guidelines chart.

The court may consider the relationship between the defendant and the victim, but an assault in which the victim and the defendant know each other should not, for that reason alone, be treated less seriously. This issue must be considered carefully in the context of specific facts.

The court should examine information available at sentencing in connection with psychological, emotional, bodily or other harm to the victim. Some victims may suffer lifelong from this offense; others may recover more quickly. The time between the offense and sentencing may not be sufficient to assess long term harm. The court should consider impact to the individual victim; this may be demonstrated by the victim's statements as well as information regarding the victim's response to the crime. Some victims feel the need to move, others are no longer free to go certain places, or engage in certain activities. Yet others may be unable to work, have a relationship, or engage in other social contacts. Reports, if any, of family members, treatment providers, or others who know the victim well may provide valuable insights.

Under the Guidelines, the court must determine whether the particular offense is mitigated, intermediate or aggravated. The presence or absence of any factor, in and of itself, does not mean that the offense should be classified as more or less severe. In sum, because of the variety of factors that may be present in connection with a particular offense, determination of the offense severity of a sexual assault is particularly delicate and complex. The Guidelines are intended to assist in this complex task.

### **Second degree sexual assault Wis. Stat. 940.225(2)**

Many of the offense severity factors described in connection with first degree sexual assault are appropriate to consider in connection with second degree sexual assault. For that reason, the Notes section on first-degree sexual assault should be consulted.

However, the elements of first and second degree sexual assault are different, and the difference must guide the manner in which the factors are weighed. Consider, for instance, the use of a weapon to carry out an offense resulting in a conviction for second degree sexual assault. Since the use of a weapon is not a necessary element of second degree sexual assault, the use of a weapon during the commission of an offense that results in conviction for second degree sexual assault must be analyzed differently than the use of a weapon during the commission of an offense that results in conviction for first degree sexual offense based on the use of the weapon.

### **First degree sexual assault of a child Wis. Stat. 948.02(1)**

As in first and second degree sexual assault, determination of offense severity requires analysis of the nature of the assault itself. Generally, sexual intercourse or bodily intrusion may cause more harm than sexual contact. A touching over the victim's clothing may cause less harm. This factor should be carefully considered, however, in the context of factors, including:

- age of the victim
- bodily harm beyond the assault itself
- other forms of harm
- transmission of disease, and the actual disease transmitted
- the degree of force used, if any
- threats to the victim
- abduction or restraint of the victim
- location of the assault
- the kind of weapon involved, if any, and the manner in which it was used
- efforts to preserve the assault by the use of photographs or videotapes
- psychological manipulation of the victim

The court should also bear in mind that the fact that the victim is under 13, without further analysis, may not be treated as a factor that increases offense severity. This is so because that fact is an element of the offense, and so is accounted for in the Guidelines chart. With respect to the age of the victim, the court should consider that, by its nature, this offense involves an assault upon a victim whom the defendant knows is vulnerable. This does not imply, however, that the court may not consider factors associated with age to assess offense severity. While younger children are ordinarily considered more dependent than older children, and hence arguably more vulnerable, age alone is not a true measure of the child's degree of vulnerability or of the harm done to the child.

Another factor the court may consider is whether the defendant ordered or advised the victim to maintain silence; threatened the victim, abducted or restrained the victim. The court should also consider whether force was used, and the degree of force.

In some child sexual assault cases, there are reliable indicators that the victim has suffered multiple sexual assaults over a long period of time. Even if the defendant is convicted of only one count, the court may consider the duration of sexual abuse. The court may consider the relationship between the defendant and the victim, but should not conclude from this fact alone that an offense between persons who know each other is necessarily less harmful.

Given the age of the victim of first degree sexual assault, pregnancy of the victim is unusual, and therefore it is not a factor that the court is likely to encounter. However, the court is not precluded from considering pregnancy in a case where the victim became pregnant as a result of the assault, and the harm this may cause to her and to her family.

The court should examine information available at sentencing in connection with psychological, emotional, bodily or other harm to the victim. Some victims may suffer lifelong from being victimized sexually as children; others may recover more quickly. Most victims will confront this issue at various times in their lives. It is therefore highly unlikely that the duration of psychological harm will be known by the time of sentencing. As with adult victims of sexual assault, reports, if any, of health care providers and family members, or others who know the victim well, may provide valuable insights when assessing harm to the victim.

Under the Guidelines, the court must determine whether the particular offense is mitigated, intermediate or aggravated. The presence or absence of any factor in and of itself does not mean that the offense should be classified as more or less severe. In sum, because of the variety of factors that may be present in connection with a particular offense, determination of the offense severity of child sexual assault is particularly delicate and complex. The Guidelines are intended to assist in this complex task.

### **Second degree sexual assault of a child Wis. Stat. 948.02(2)**

The distinction between first and second degree sexual assault is based on the age of the victim. Therefore, offense severity factors for second degree sexual assault are often similar to those associated with first degree sexual assault of a child. While the discussion of offense severity factors associated with first degree sexual assault of a child is not repeated here in its entirety, the court should turn to that section (above) for guidance.

Some second degree sexual assault offenses involve a defendant who is relatively close in age to a victim at the upper ranges of the definition of a child. The court may consider the age of the defendant and of the victim, whether the victim acted voluntarily though legal consent was impossible, and whether the defendant and the victim were adolescents involved in a voluntary sexual relationship. A related issue is that victims of second degree sexual assault may become pregnant as a result of the assault, and that pregnancy at an early age has long-term consequences for the victim and the community.

Under the Guidelines, the court must determine whether the particular offense is mitigated, intermediate or aggravated. The presence or absence of any factor in and of itself does not mean that the offense should be classified as more or less severe. In sum, because of the variety of factors that may be present in connection with a particular offense, determination of the offense severity of child sexual assault is particularly delicate and complex. The Guidelines are intended to assist in this complex task.

### **Armed robbery Wis. Stat. 943.32(2)**

In assessing the severity of an armed robbery, the court should consider the character of the specific crime. To the extent this can be determined, the court should determine the manner and nature in which a weapon was used, and the duration and location of the robbery. The court may consider the value of items taken, though many times the loss is less consequential than the traumatic impact of this offense to the victim.

The court may consider the type of weapon used. An armed robbery may involve the use of a toy or pretend weapon, such as a hand in the pocket. When a toy or pretend weapon is used, in some sense the actual danger posed is less than when a real firearm is used, but the degree of anxiety suffered by a victim may be just as great. And, depending on the circumstances, there is always the risk that even when a toy weapon is used, the degree of actual danger will vary based upon others' response. Therefore, the court should weigh related factors, such as the degree and duration of force or threat of force, and whether any threats were made.

Generally speaking, aggravated robberies may involve one or more of the following characteristics: the use of a loaded firearm, perhaps an illegal weapon such as a sawed-off shotgun; the firing of the weapon; a mask; or a great degree of force.

### **Robbery Wis. Stat. 943.32(1)**

The severity of a robbery is related to the degree and nature of the force used, its duration and location. While it is appropriate to consider the value of items taken, the value of the loss may be less consequential than the traumatic impact of this offense to the victim.

The degree of force involved, and its duration, is relevant to offense severity. A robbery carried out by verbal threats of force in order to take a relatively small amount of money, such as a student's lunch money, is of a different character than one in which the victim is beaten. In other words, a mitigated robbery may involve minimal threat of force, short duration and no injury; an intermediate robbery, a greater degree or threat of force; and aggravated forms of robbery, the use of a weapon, a mask, or a greater degree of force or injury.

### **Burglary Wis. Stat. 943.10(1)**

Analysis should include factors such as the harm to the individual victim, the value of items taken or damaged, and damage to the burgled premises.

Harm to the victim is more fully described in Section I-B below, but with respect to burglary, the court may consider specifically the type of premises burgled, and the crime intended upon entry, if known. Burglary of a dwelling is ordinarily considered more serious than burglary of a garage or commercial structure. This is because burglaries of dwellings ordinarily have a stronger and longer lasting impact on the victim. Burglary of a dwelling, the purpose of which was to steal or to assault sexually, may make the victim feel unsafe, even at home, for many years to come. By contrast, burglary of an open garage accompanied only by the theft of an item of small value may have little or no long-lasting effect on the victim.

Burglary of a commercial structure is often treated as less severe than of a dwelling. However, the nature of the burglary of a commercial structure or of a garage may in some instances cause substantial harm. For instance, the burglary of a business that was vandalized or otherwise incapacitated from functioning may cause the business severe economic and other consequences far beyond the value of stolen items.

Burglaries that involve a confrontation with occupants may be more traumatic to the victim than the burglary of an unoccupied structure. The judge may consider the nature of the confrontation, and related concepts, such as whether the confrontation was intended or reasonably certain to occur, and the circumstances of the confrontation.

The court may also consider whether the defendant abandoned the burglary after unlawful entry. For example, the burglar, who, upon entry, discovered that the premises were occupied and left, may have caused less harm than the burglar who, upon discovery of the occupants, persisted in his crime.

**Possession with intent to deliver cocaine- 1 gram or less proposed**  
**Wis. Stat. 961.41(1m)(cm)1g**

A mitigated offense is generally possession with intent to deliver without any indicia of dealing for profit. The intended delivery is to friends or acquaintances, or an accommodation or favor to others.

An intermediate offense is generally one of possession with intent to distribute for profit, even though the profit margin may be small. Indicia of dealing and profit have historically included beepers and cell phones, but with the proliferation of these items in society, they have become, in and of themselves, much less reliable indicators of dealing. Beepers and cell phones may be analyzed with caution in the context of reasons given for their possession and the manner in which they were purchased.

An aggravated offense is generally an offense associated with a fortified drug house; or in a location where there are other kinds of controlled substances, luxury items or weapons; or possession in the presence of children; or possession with intent to use the drug to secure sexual activity from another person. Possession with intent to deliver drugs to secure sexual activity includes, for example, paying a prostitute with drugs, or supplying drugs to an addicted person in a direct exchange for a sexual act, or supplying drugs to incapacitate or debilitate another person to induce them to engage in sexual activity.



Association with gangs or ongoing involvement in a drug distribution network is an important consideration when assessing the offense severity of a drug offense.

Another consideration is the location where the possession with intent to deliver took place. Consistent with the historic concern for regulating licensed premises, the court should consider whether the offense was conducted in whole or in part on premises licensed for the sale of alcoholic beverages.

Finally, the court should consider the impact of the offense on the community and neighborhood in assessing offense severity.

**Possession with intent to deliver THC (marijuana) (200 - 500 grams) proposed  
Wis. Stat. 961.41 (1m)(h)2**

Considerations associated with offense severity for possession with intent to deliver marijuana are similar to those for possession with offense severity for possession with intent to deliver less than one gram of cocaine, and the court may turn to that section of the The court should also consider the impact of the offense on the community and neighborhood in assessing offense severity.

**Theft - more than \$10,000 proposed Wis. Stat. 943.20(1) and (3)(c)**

In assessing the severity of this offense, the court may consider not only the value of the property taken, but its impact upon the victim, and the relationship between the victim and the defendant. The court may consider how the defendant gained access to the property taken, the degree of planning necessary to execute the offense, and whether this was a continuing offense (though with only one conviction). Additional considerations include the motive and the use that the defendant made of the property that was taken.

**Forgery Wis. Stat. 943.38 (2); and Forgery uttering Wis. Stat. 943.38(2)**

The considerations applicable to offense severity are similar to those involved in a theft and the preceding section should be consulted. In connection with the degree of planning involved, the court may consider the sophistication, or lack of sophistication necessary to accomplish the forgery.

The court may consider that an offense motivated by an urgent need for necessities such as rent may differ in severity from one motivated by a desire for luxury items, addiction to prescription or illegal drugs, or simply by greed.

**Section I-B Assess harm caused by the offense**

The sentencing court should address the impact of the crime upon the victim, and the individual victim's statement and needs. These factors may bear not only upon the offense severity assessment, but also upon conditions of probation or extended supervision.

To the extent that it has not already been fully considered in connection with Section I-A above, the court should address any vulnerabilities of the victim, how these may have affected the harm done to the victim, and whether the defendant was aware of the vulnerabilities.

Again, to the extent that it has not already been considered fully in connection with Section I-A above, the court should evaluate the impact of the crime on the victim. This includes consideration of any harm suffered by the victim. It may be bodily harm, as defined in Wis. Stat. 939.22(4), as well as the psychological, physical, and financial impact of the crime on the victim and the victim's family or property.

The court may also take into account whether a neighborhood or community has suffered harm as a result of the defendant's conduct.

### **Section I-C Defendant's role in the offense**

In assessing the severity of an offense involving more than one offender, the court may consider the defendant's role in the offense. Generally, a finding that a defendant was a leader or organizer, or was in a position of authority suggests that the defendant's offense severity level should be increased. Similarly, a finding that the defendant's role was minimal, or that the defendant was pressured or manipulated by others suggests that the defendant be placed in a lower offense severity level. However, this determination should be made in the context of all factors bearing upon the severity of the offense.

### **Section I-D Statutory aggravating factors and penalty enhancers**

#### **Statutory aggravating factors**

In connection with the recommendations of the Criminal Penalties Study Committee (Committee), several former penalty enhancers were recast as statutory aggravating factors. Since the statutory aggravating factors represent former penalty enhancers, sentencing courts should consider them with great care. The presence of a statutory aggravating factor generally should result in placing the offense at a higher offense severity level.

#### **Offense committed in association with a gang**

Gang association, formerly a penalty enhancer, is now a statutory aggravating factor. Facts demonstrating that the offense was related to gang activity or other forms of organized criminal activity may increase the severity of the offense. Association with a gang may affect the impact of the crime on the victim and the community. Gang membership may constitute a form of intimidation that facilitates the commission of the crime, and discourages the victim from resisting or reporting the offense. For example, a small shop owner in a neighborhood where gangs are active may be reluctant to resist or report a theft by a gang member. In those cases, gang affiliation affects the severity of the offense. However, the offense should not automatically be treated as more severe simply because, unrelated to the offense and its impact on the community, the defendant was associated with a gang.

## **Penalty enhancers**

When pleaded and proved as required by law, penalty enhancers increase the maximum penalty. There are several penalty enhancers that may apply to the offenses discussed in these Notes:

- Dangerous weapon Wis. Stat. 939.63
- Hate crime Wis. Stat. 939.645
- Violent crime in school zone Wis. Stat. 939.632
- Domestic abuse Wis. Stat. 939.621
- Drug offense within 1,000 feet of school, park, multi-unit public housing project, correctional facility, and other places specified by statute Wis. Stat. 961.49
- Drug Distribution to persons under age 18 Wis. Stat. 961.46

The court should consult the specific statute to evaluate its applicability.

## **Pleaded and proved penalty enhancers**

When a defendant has been charged with a crime to which a penalty enhancer has been added, and has been convicted thereof, the maximum possible penalty for the crime is increased. In these cases, the presence of the penalty enhancer should generally result in placing the offense at a higher offense severity level. The court may also increase the maximum penalty in each of the cells of the sentencing chart to accommodate the fact that the statutory maximum for that offense has been increased by operation of the penalty enhancer. Consistent with this, the sentence imposed may be higher than the sentence set forth in the highest cell of the sentencing chart.

## **Uncharged or dismissed penalty enhancers**

When a penalty enhancer has not been charged, or has been dismissed, but the circumstances of the defendant's crime fit the description of a penalty enhancer, the offense severity should be evaluated in the same manner as it would when a statutory aggravating factor is present. The court should consider the existence of these circumstances with great care, and should generally place the offense at a higher offense severity level.

## **Use of a dangerous weapon**

The use of a dangerous weapon is referenced at various points in the Notes. For instance, depending on the particular offense involved, use of a weapon may have been addressed in Section I-A of the Notes. However, in order to avoid redundancy and confusion, use of a dangerous weapon appears in the Worksheet only in Section I-E.

As with other penalty enhancers that are not pleaded or proved, the court should consider the existence of a weapon used to commit or facilitate the commission of an offense with great care. The court may also encounter circumstances where the proof is insufficient to charge or to prove the dangerous weapon enhancer, but may nevertheless conclude that, in connection with

other circumstances, the weapon is highly relevant to offense severity. In those circumstances, the court should check the dangerous weapon penalty enhancer as uncharged or dismissed. In evaluating the proper weight to give to the use or presence of a weapon, the court should carefully consider factors such as the connection between the weapon and the offense, the nature of the weapon and its use.

## **Section I-E Other factors related to offense severity**

This section contains other factors related to offense severity.

### **Abuse of a position of trust or authority**

The abuse of a position of trust, taking advantage of a position of authority, or making use of a special skill or license in order to commit the crime are factors that may increase the severity of the offense

### **Conduct reflects more serious conduct than the offense of conviction**

At times, the underlying conduct reflects conduct more serious than the offense of conviction. For instance, as a result of plea negotiations, the defendant may have been convicted of second degree sexual assault of a child although the child victim was under the age of 13. The court may consider this in assessing offense severity.

## **Section II Risk assessment evaluation**

Section II of the Worksheet contains factors that are useful in assessing the risk that the defendant poses to public safety or to re-offend. Risk assessment involves evaluation of factors indicative of risk and of criminal history. *The risk assessment axis of the sentencing chart reflects the need to incapacitate the defendant to safeguard public safety; risk assessment pertains to the likelihood of re-offense.*

To assess future risk, the court may evaluate the character of the offense itself, just as the offense itself was analyzed to determine offense severity. Using burglary as an example, the court may consider that there are different kinds of burglaries, and their different characteristics may reveal information relevant to assessing whether the defendant will commit another burglary or re-offend in another way. For instance, a burglary may have been opportunistic, as when a defendant, not having planned to commit the crime, passes by an open garage door, sees a bicycle and impulsively steals it. Depending on other factors known about the defendant, the court may determine that this impulsive act may, or may not be, a fair predictor of re-offense.

The reason why a defendant entered the premises may itself be indicative of future risk. A burglary may be retaliatory, that is, aimed at a particular victim to get even, to intimidate or to coerce. Depending on the particular circumstances, a defendant involved in this kind of offense may pose no risk to commit another burglary, but may pose a risk to commit another, perhaps even more serious offense. The defendant may be involved in a volatile relationship where there

is future risk of violence. However, when viewed in the context of other factors, the court may conclude that the burglary represents anomalous conduct, and that the defendant is unlikely to re-offend.

A crime may be mischievous or thrill-seeking, with no purposes other than to cause damage. Depending on other circumstances, this may be a predictor of re-offense. A defendant who enters premises for the purpose of committing a sexual assault may pose a significant risk to re-offend, though not necessarily with a burglary. An examination of factors affecting the risk for future sex offenses may be more appropriate in such a situation.

Factors related to the manner in which the burglary was executed, or to the defendant's background and history, may suggest that the burglary was professional. A professional burglar poses a significant risk to re-offend.

In other words, the court may evaluate the character of a particular offense, whether it is burglary or another crime, to determine what it reveals about future risk to public safety or to re-offend. With respect to the horizontal axis of the chart, the purpose of evaluating the character of the offense, the offender, and other factors listed below, including criminal history, is to assess the degree and nature of the risk that the defendant poses to individual victims and to the community. The court ultimately must decide whether the defendant poses a lesser, medium or high risk to public safety or to re-offend.

## **Section II-A Factors that may suggest heightened/lesser risk**

Section II-A lists factors that may be considered in assessing risk.

### **Age**

The defendant's age is frequently related to the risk to re-offend. With the exception of sexual offenses, adolescents and young adults commit most crimes. That is, as people age, they tend to stop committing crimes. Therefore, a burglar in his late thirties or forties may pose a great risk to re-offend; aging has not stopped him from breaking the law.

The effect of age on criminal behavior is not as clear when a sexual assault is involved. For instance, pedophiles tend to pose a risk to re-offend throughout their lives.

### **Alcohol or drug dependence and treatment**

The court may consider whether the defendant committed the offense while under the influence of an intoxicant or a controlled substance, whether the defendant is dependent on alcohol or controlled substances, or whether there is a history of alcohol or drug abuse. Anecdotal and statistical evidence reveals a high correlation between many crimes and a dependence on alcohol or drug dependence. The defendant may remain a significant future risk unless his alcohol or drug dependence has been, or can and will be effectively addressed. Previous unsuccessful courses of treatment may reflect on risk to reoffend.

## **Character**

In assessing risk, the court may consider whether the nature of the defendant's character suggests that the offense of conviction is an anomaly. It is generally preferable to evaluate character in the context of a demonstrated history of good conduct.

## **Employment history**

Evidence of employment that enables the defendant to support himself and his family is generally an indication of reduced risk of re-offend. This is particularly true when the offense had a financial motive.

A record of stable employment is of even greater significance than employment at the moment of sentencing. A history of employment, depending on other factors, may indicate a lesser risk to re-offend. The defendant's employment history may also be relevant when setting conditions of probation or extended supervision.

## **Mental health, treatment and counseling**

Issues related to mental health merit careful consideration. If previously untreated, a defendant's commitment to a course of treatment and medication may be an indicator of lesser risk. However, at times a history of mental illness, particularly if coupled to violent conduct, may reveal heightened risk. These factors may be considered when setting conditions of probation or extended supervision.

## **Performance on bail**

Performance on bail may be treated as an indicator of future risk. The defendant's conduct may indicate that he can be supervised adequately in the community. Obviously, evidence of negative urine screens and of compliance with conditions of pre-trial release, if any, tend to reflect favorably.

Whether the offense for which the defendant is being sentenced was committed while he was on bail on other charges is a factor that the court may consider. For instance, the fact that a defendant is released on bail for operating a motor vehicle while under the influence of an intoxicant, and then commits a sexual assault, also while under the influence of an intoxicant, is reflective of high risk. However, if, while on bail release for forgery a defendant is arrested for operating a motor vehicle without a driver's license, the bail violation is less closely associated with risk.

## **Physical condition**

Consider whether the defendant's physical condition affects the ability to supervise him. For instance, a person who is confined to a wheelchair may pose a lesser risk of violent conduct.

### **Prior acts**

The court may consider wrongful conduct even if it did not result in conviction. However, the court should bear in mind that conduct that fell short of conviction might be insufficiently reliable to be relevant to future risk.

Consider whether a defendant's prior wrongs affect the risk that the defendant will re-offend or cause harm of the public in the future. At times, previous acts have resulted in arrest but not conviction. The court should evaluate the number and reason for the arrests. A court may conclude that it is appropriate to treat misconduct that has resulted in arrest as more serious than misconduct that has gone undetected. This is because, depending on the circumstances, the fact of arrest may fairly constitute a warning to the defendant that his conduct is wrongful and should stop. When conduct has gone undetected, the effect of arrest or conviction on future risk has not been demonstrated. It may be that arrest itself will reduce future risk to re-offend. However, this is not to suggest that the court should never consider previous undetected misconduct.

Prior acts may also include previous read-in offenses if indicative of future risk, or may have little to add to the risk analysis. For instance, if the defendant has a burglary conviction and there was a read-in for the theft of items stolen at the time of the burglary, the read-in for the theft has relatively little to add in predicting risk; the burglary conviction already reflects the conduct. However, a read-in for criminal damage to property for vandalism during the course of the robbery may be informative of future risk.

### **Ties to family and community**

The presence of a strong and stable relationship with family, as well as strong ties to the community in which the defendant lives and works, may be considered when assessing risk. A supportive and committed family may reduce the risk posed by the defendant. This factor may also be relevant when setting conditions of probation or extended supervision.

## **Section II-B Criminal history**

This section requires that all of the defendant's previous convictions, whether felonies or misdemeanors, be listed on the Worksheet or attached. This section should be prepared before sentencing by the PSI writer or another person designated by the court. The PSI writer may copy and attach the portion of the PSI that lists previous convictions and adjudication of delinquency.

## **Section II-C Assessing criminal history**

The Guidelines direct that criminal history be treated objectively in a manner consistent with the groupings found in the Worksheet and described below under Sections II-C-1, II-C-2 and II-C-3. However, in those cases where criminal history understates or overstates the defendant's risk to public safety or to re-offend, the sentencing court should make appropriate adjustments to the risk assessment axis. Included among the factors that may distort criminal history and warrant adjustment of the groupings described at Sections II-C-1, II-C-2 and II-C-3 are:

- Absence of criminal history
- Age of convictions
- Intervening events
- Multiple offenses for closely-related crimes
- Unrelated convictions

### **Absence of criminal history**

Criminal history is an important consideration in assessing future risk to public safety or to re-offend. The absence of a criminal history does not, in and of itself, lead to an inevitable conclusion that the defendant should be placed in the lesser risk category. In some instances, a bare reference to criminal history may be an inadequate indicator of risk. For instance, prior acts and read-in offenses not resulting in conviction (discussed in Section II-A above) may be predictive of future risk. In the case of a burglary where the defendant entered for the purpose of committing a sexual assault, the burglary conviction may be an inadequate indicator of the risk posed by the defendant.

### **Age of convictions**

The age of the prior convictions, as well as the age of the defendant at the time of the past and present conviction, affect the risk assessment. As already stated, the age of the defendant in itself affects the risk to re-offend. Generally, the more distant the past conviction or behavior is from the present offense, the less reliable indicator it is of future risk to re-offend or to public safety. (A significant exception to this are sexual assault offenses, which must be very carefully treated no matter how old the conviction or the offender.) Of course, lapse of time between the previous offense and the present crime is less meaningful in those situations where the defendant has been incarcerated and thus unable to re-offend outside of a correctional institution. In those instances, it is more appropriate to evaluate the lapse of time from release to the community and re-offense.

### **Definition of conviction includes adjudications of delinquency**

For purposes of these Guidelines, the word “conviction” means a criminal conviction or an adjudication of delinquency for an act that would have been a crime if committed by an adult. Similarly, any reference to a “felony” or a “misdemeanor” includes crimes so classified by statute as well as any adjudication of juvenile delinquency that would have been a felony or misdemeanor if committed by an adult.

### **Definition of legal status**

Legal status means that at the time of the offense, the defendant was:

1. on probation for any felony or violent misdemeanor (as defined above); or
2. on parole; or
3. on extended supervision; or
4. subject to juvenile supervision following adjudication for an act that would have been a felony or a violent misdemeanor if committed by an adult; or



5. an escapee; or
6. an absconder; or
7. an inmate serving a sentence; or
8. a juvenile under a secure corrections disposition.

The court may consider whether or not the defendant was on bail at the time of the offense, but bail release does not fall within the definition of legal status. See Notes Section II-A, Performance on bail.

The commission of a crime while on some form of legal status generally means that community supervision was insufficient to control the defendant's risk to re-offend. In light of this, the court should consider whether a correctional agency could adequately supervise the defendant in a manner consistent with public safety. A person who has been the subject of close supervision in the community, but who nevertheless re-offends, may have demonstrated that no degree of community supervision will suffice to protect the community

### **Definition of violent offenses**

Violent offenses include any misdemeanor or felony (or juvenile offense for an act that would have been a misdemeanor or felony if committed by an adult) that involved:

1. the use or threat of use of force. This definition of "violent" assumes a person-to-person confrontation; or
2. the sexual assault of a child; or
3. the use or possession of a dangerous weapon as defined in Wis. Stat. 939.22(10).

### **Intervening events**

Events intervening between earlier convictions or conduct and the present offense may affect the risk assessment. Consider whether the defendant, since his previous crimes has availed himself of rehabilitative resources successfully, continued with his education, obtained an educational degree, established a history of stable employment, and lived in a manner consistent with the public good.

### **Multiple convictions for closely related crimes**

Where the defendant has multiple previous convictions, the court should be informed whether these were the product of a single event or course of conduct; or were distinct, discrete occurrences. This does not mean that simply because multiple crimes are closely related in time they should be disregarded. For example, four armed robbery convictions resulting from a single occurrence where four victims were present may be viewed differently than four convictions that resulting from four separate armed robberies occurring over four consecutive days, or even during the course of the same day. In sum, the court should analyze convictions flowing from closely related conduct to insure that the convictions are not used in a manner that overstates risk.

### **Unrelated conduct**

The sentencing court should examine the defendant's criminal history in the context of the present offense to determine whether prior convictions are relevant predictors of future risk. For instance, when imposing sentence for a burglary, the fact that the defendant recently committed another burglary or burglaries is highly relevant to the risk to re-offend. In certain circumstances, a recent conviction for a controlled substance offense, even a misdemeanor or citation, may be more indicative of risk because, depending on the circumstances, it may be a reliable indication of risk to re-offend. This is so because of the correlation between substance abuse and burglary. By the same token, conviction for a violent offense may, in some instances, be a less reliable indicator of future risk. A burglary defendant who has a battery conviction might be at a lower risk to re-offend than a person with a recent non-violent misdemeanor conviction. For example, if the felony battery was the result of a schoolyard fight many years before, when the defendant was an adolescent, but who has been crime free since the felony battery conviction might not be a reliable indicator of future risk. This is not to say that the felony battery conviction should be wholly disregarded, rather, that it should be weighed carefully to determine whether it is predictive of future risk.

### **Section II-C-1 Lesser risk**

Generally, lesser risk assessment is strongly suggested when at the time of the offense the defendant had no legal status and no criminal history; or no legal status and convictions for non-violent misdemeanors only; or no legal status and a conviction for one non-violent felony.

### **Section II-C-2 Medium risk**

Generally, medium risk assessment is strongly suggested when the defendant is being sentenced for a non-violent felony committed while the defendant was on legal status; or when the defendant has been convicted once before for the same or a similar offense; or when the defendant has a criminal history for two or three violent misdemeanors, or for two or three non-violent felonies, or one violent felony

### **Section II-C-3 High risk**

Generally, high risk assessment is strongly suggested when a defendant is being sentenced for a violent felony committed while the defendant was on legal status; or when the defendant has been convicted two or more times for the same or a similar offense; or when the defendant has a criminal a history for two or more violent felonies or four violent misdemeanors.

The above descriptions of lesser, medium and high risk are not an exhaustive compilation of the varieties of criminal history records that a sentencing court might encounter. In those circumstances where a defendant's criminal history is not precisely reflected in any of the descriptions embodied in Sections II-C-1, II-C-2 and II-C-3, the court may analogize to these descriptions of risk to determine whether the defendant should be placed in the lesser, medium or high risk categories.

### **Sexual offenses and future risk**

Time and resource constraints precluded the Committee from identifying all risk factors associated with sex offenses. The Committee encourages the permanent Wisconsin Sentencing Commission to identify more precise sexual offense risk factors. Sentencing courts may consider risk factors associated with sex offenders not referenced in these Notes, including the insights of credible experts in this area.

## **Section III Specific offense chart**

Section III of the Worksheet includes a chart with nine cells. The offense severity level is the vertical axis of the chart and the horizontal axis represents future risk to public safety or to re-offend. The structure of the chart is not intended to indicate that the total number of offenders should be distributed equally among the nine cells. The distribution of offenders will vary by offense. It may be that in connection with one offense, almost all defendants will fall within the low risk/mitigated offense category. Similarly, it may be that few defendants will be placed in the aggravated offense severity/high risk offender cell. The aggravated offense severity level/high risk offender cell accommodates the highest sentence possible for the worst case offender.

Section III of the Worksheet also includes information regarding the percentage of defendants placed on probation for the specific offense during the previous five years. This information is included in order to provide information regarding the frequency with which probation has been used for the particular offense.<sup>3</sup>

After determining whether the offense severity level is properly described as mitigated, intermediate or aggravated, and whether the defendant presents a lesser, medium or high risk to public safety or to re-offend, the court should place the defendant in the corresponding cell of the specific offense chart. This provides the sentencing court with a sentencing range.

## **Section IV Adjustments to ranges in the sentencing chart**

The Guidelines envision analysis of most factors relevant to sentencing as related either to offense severity or risk assessment. However, some factors that may be legitimately argued and considered at sentencing are difficult to describe as related to either of these considerations. Section IV references factors that may warrant adjustment of the sentence indicated by the specific offense chart.

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<sup>3</sup> Cautionary note: Statistics regarding the number of defendants placed on probation are derived from Department of Corrections database. They do not incorporate the C-CAP database, and may be incomplete.

## **Section IV-A Punishment is needed in the form of incarceration**

Though a defendant may otherwise be a candidate for probation, considerations of retribution or deterrence not fully accommodated by the preceding sections of the Guidelines may lead the sentencing court to impose a term of incarceration, either as a condition of probation or in prison. The court should state the reasons for deviation from the sentencing range indicated in the sentencing chart.

## **Section IV-B Additional factors that may warrant adjustment of the sentence**

The following factors are not always related to offense severity level or future risk. They may nevertheless lead a court to adjust the sentence.

### **Acceptance of responsibility; co-operation with authorities**

The court may find it appropriate to reduce the sentence when the defendant accepts responsibility for the offense; or expresses genuine remorse, to the extent that this can be determined; or demonstrates that he has learned a lesson from the experience; or has provided valuable services to law enforcement authorities.

### **Attorneys' recommendations**

The court may give weight to the recommendation given by the attorney, particularly if the reasons for the recommendation are set forth at sentencing and the court finds that they are well founded.

### **Collateral consequences**

At times, defendants suffer collateral sources of punishment from having been charged or convicted of an offense. Collateral punishment may take the form of the loss of a job or professional license or certification with long-lasting financial consequences, public humiliation, and loss of property (as in a forfeiture action). The collateral consequences of conviction may be considered by the court and may mitigate a sentence. However, undue weight to collateral consequences could have the unintended effect of unfairly benefiting wealthier defendants.

### **Effect of multiple counts**

Imposition of sentence on multiple counts may require upward adjustment if the sentences are imposed concurrently or downward reduction if sentences are imposed consecutively.

### **Habitual criminality**

When an allegation of habitual criminality is established at or before sentencing, the court may determine that a sentence in excess of the maximum penalty is required, and may impose such a sentence as provided for in the habitual criminality statute (Wis. Stat. 939.62) or the drug repeater statute (961.48).

### **Read-in offenses**

Read-in offenses may cause the sentencing court to deviate upward, or to set different conditions of probation or extended supervision.

### **Restitution paid at great sacrifice**

The payment of restitution is related to acceptance of responsibility and to remorse. When restitution is paid before sentencing, the court may give favorable consideration. However, care should be taken to analyze the financial resources of the defendant. At times, restitution is paid by family members whose financial resources are so great that payment means less than a smaller payment by an individual with limited resources.

## **Section V Imposition of sentence**

### **Extended supervision**

When a sentence of incarceration is imposed, or imposed and stayed, the court must impose a term of extended supervision of at least one quarter of the period of incarceration. The length and conditions of extended supervision, if the court deems that special conditions in addition to standard conditions of supervision are appropriate, must be determined as part of the sentence.

The length of extended supervision should be sufficient to protect the community and may also serve to punish the defendant. Considerations related to the re-integration of the defendant into the community, payment of restitution, rehabilitation and other special needs, such as the need for treatment or counseling that might not be met in a correctional setting, may influence the court's decisions regarding extended supervision. Sentencing courts should not automatically impose a maximum term of extended supervision. In many circumstances, a term of extended supervision of one year or one quarter the term of incarceration, whichever is greater, may suffice to serve the proper ends of extended supervision. However, with certain kinds of offenses, such as child sexual assault, the sentencing court may wish to set a longer period of extended supervision. Ordinarily, the length of extended supervision should be no less than one year or one quarter of the term of incarceration, whichever is greater.

**Boot camp**

In order for the defendant to qualify for boot camp, the court must announce this at the time of sentencing. Boot camp has the effect of reducing the period of incarceration.

## Appendix G

### **COST FOR STRICT SUPERVISION MODEL FOR 1,000 OFFENDERS**

This scenario results in 3 units staffed with 16 agents on a 4-4-2 staffing pattern. It also assumes 1 supervisor on 7 days/week on first and second shift.

**ASSUMPTIONS:**    **1:20 Agent:Offender Ratio**  
                          **3.50 Unit Supervisor/Unit of 16 Agents**  
                          **1:3 Officer:Agent Ratio**  
                          **52% of offenders on monitors**  
                          **2.5% of offenders in TLU at all times @ 60/day**

		<b>PER CAPITA COST</b>	
<b>TOTAL ANNUAL COST:</b>		<b>\$8,880,800</b>	<b>\$8,881</b>
Included in Annual Cost are:			
POS @ \$3,500/offender	\$	3,500,000	
Ongoing Monitor Costs (for 520 monitors)-10%	\$	235,400	
Leased Vehicles (15 compacts, 6 minivans)	\$	79,400	
TLU (2.5%)	\$	547,500	
Staff Costs for:	\$	4,518,500	
50.00 Agents			
16.75 Officer 3's			
10.00 Corr. Supervisors			
3.00 Prog. Assistant Supervisors			
16.00 Program Assistant 1's			
3.50 Prog. Assistant 2's at Mon. Cntr.			
<b>STARTUP:</b>		<b>\$1,583,200</b>	<b>\$10,464</b>
Startup includes:			
Purchase of 520 monitoring units	\$	624,000	
Safety Equipment of:	\$	5,300	
1 set of body armor/supv			
1 set of waistchains/supv			
1 cell phone/supv			
One time move costs	\$	44,300	
One time vehicle safety: radios, cell phone, cage	\$	19,100	
Staff related one time standard package costs	\$	890,500	

## Appendix H

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### EXTENDED SUPERVISION

#### Recommended Administrative Law Changes:

A. Wis. Admin. Code DOC 331.03(3) would be revised as follows:

**DOC 331.03 Revocation of probation and parole. (1) Revocation.** A client's probation or parole may be revoked and the client transported to a correctional institution or court if the client violates a rule or condition of supervision.

**(2) Investigation.** A client's agent shall investigate the facts underlying an alleged violation and shall meet with the client to discuss the allegation within a reasonable period of time after becoming aware of the allegation.

**(3) Recommendation.** After investigation and discussion under sub. (2), the agent shall decide whether to:

(a) Take no action because the allegation is unfounded;

(b) Except as provided in par. c, resolve alleged violations by:

1. A review of the rules of supervision followed by changes in them where necessary or desirable, including return to court;

2. A formal or informal counseling session with the client to reemphasize the necessity of compliance with the rules or conditions; or

3. An informal or formal warning that further violation may result in a recommendation for revocation; or

(c) ~~Recommend revocation for an alleged violation.~~ Nothing in par.b. prevents the agent from recommending revocation when the behavior of the offender precludes implementation of alternatives. Neither is the agent obligated to implement every alternative available.

(d) Recommend revocation for an alleged violation.

B. Wis. Admin. Code HA 2.05(7) would be revised as follows:

HA 2.05 Revocation hearing

**(7) DECISION.** (a) The administrative law judge shall consider only the evidence presented in making the decision.

(b) The administrative law judge shall:

1. Decide whether the client committed the conduct underlying the alleged violation;

2. Decide, if the client committed the conduct, whether the conduct constitutes a violation of the rules or conditions of supervision;

3. Decide, if the client violated the rules or conditions of supervision, **whether, within the administrative law judge's discretion, revocation should result or whether an alternative to revocation may be appropriate.**

~~revocation should result or whether there are appropriate alternatives to revocation.~~ Violation of a rule or condition is both a necessary and a sufficient ground for revocation of supervision. Revocation may ~~not~~ be ordered ~~the disposition, however, if unless~~ the administrative law judge finds on the basis of the original offense, the offender's criminal history, juvenile delinquency referrals and/or correctional history, and the intervening conduct of the client that:

a. Confinement is necessary to protect the public from further criminal activity by the client; or

b. The client is in need of correctional treatment which can most effectively be provided if confined; or

c. It would unduly depreciate the seriousness of the violation if supervision were not revoked.



C. DOC would be allowed to seek certiorari review of the ALJ's decision not to revoke. Wis. Stat. s. 801.50(5) would be revised as follows:

(5) Venue of an action to review a probation, a decision to revoke or not to revoke extended supervision, or parole revocation or a refusal of parole by certiorari, and **for all decisions by an administrative law judge if adverse to the Department of Corrections**, shall be the county in which the relator was last convicted of an offense for which the relator was on probation, extended supervision or parole or for which the relator is currently incarcerated.

D. The circuit court would specify the time period of revocation of extended supervision.

The subcommittee recommends that at the time of resentencing, the trial court has authority to specify a new bifurcated sentence which may not be longer than but may be equal to or less than the ES period in the offender's original sentence.

Wis. Stat. s. 302.113(9) to be revised as follows:

(9)(a) If a person released to extended supervision under this section violates a condition of extended supervision, the division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the person on extended supervision waives a hearing, may revoke the extended supervision of the person and return the person to prison **the court for disposition of the violation.** ~~The court shall return the person to extended supervision order that~~ if the person is **be** returned to prison, ~~he or she shall be returned to prison~~ for any specified period of time that does not exceed the time remaining on the bifurcated sentence. The time remaining on the bifurcated sentence is the total length of the bifurcated sentence, less time served by the person in custody before release to extended supervision. The ~~revocation~~ **court** order shall provide the person on extended supervision with credit in accordance with ss. 304.072 and 973.155.

(b) A person who is returned to prison after revocation of extended supervision shall be incarcerated for the entire period of time specified by the ~~department of corrections in the case of a waiver or by the division of hearings and appeals in the department of administration in the case of a hearing under par. (a)~~ **court**. The period of time specified under par. (a) may be extended in accordance with sub. (3).

(c) A person who is subsequently released to extended supervision after service of the period of time specified by the ~~department of corrections in the case of a waiver or by the division of hearings and appeals in the department of administration in the case of a hearing~~ **court** under par. (a) is subject to all conditions and rules under sub. (7) until the expiration of the term of extended supervision portion of the bifurcated sentence.

## **Appendix I**

## Appendix J

### RESULTS OF MAY 20, 1999 SURVEY

	Current Law		
	Probation		Prison Years
	Stayed Prison	Withheld Probation	
Burglary 1:Defendant 1	<b>3</b> <sup>9</sup>	<b>5</b> <sup>35</sup>	<b>4</b> <sup>3</sup>
Burglary 1:Defendant 2	<b>5</b> <sup>3</sup>	<b>5</b> <sup>3</sup>	<b>5</b> <sup>35</sup>
Burglary 1:Defendant 3			<b>8</b> <sup>39</sup>
Burglary 2:Defendant 1	<b>3</b> <sup>8</sup>	<b>5</b> <sup>29</sup>	<b>4</b> <sup>10</sup>
Burglary 2:Defendant 2	<b>5</b> <sup>2</sup>	<b>5</b> <sup>2</sup>	<b>5</b> <sup>37</sup>
Burglary 2:Defendant 3		<b>9</b> <sup>1</sup>	<b>8</b> <sup>38</sup>
Burglary 3:Defendant 1	<b>3</b> <sup>10</sup>	<b>4</b> <sup>33</sup>	<b>3</b> <sup>4</sup>
Burglary 3:Defendant 2	<b>4</b> <sup>6</sup>	<b>5</b> <sup>6</sup>	<b>4</b> <sup>30</sup>
Burglary 3:Defendant 3		<b>3</b> <sup>1</sup>	<b>7</b> <sup>37</sup>
Armed Robbery 1:Defendant 1	<b>5</b> <sup>6</sup>	<b>8</b> <sup>17</sup>	<b>6</b> <sup>20</sup>
Armed Robbery 1:Defendant 2	<b>5</b> <sup>3</sup>	<b>5</b> <sup>1</sup>	<b>8</b> <sup>35</sup>
Armed Robbery 1:Defendant 3	<b>5</b> <sup>1</sup>		<b>15</b> <sup>36</sup>
Armed Robbery 2:Defendant 1	<b>8</b> <sup>3</sup>	<b>10</b> <sup>2</sup>	<b>10</b> <sup>35</sup>
Armed Robbery 2:Defendant 2	<b>12</b> <sup>1</sup>		<b>15</b> <sup>37</sup>
Armed Robbery 2:Defendant 3			<b>20</b> <sup>39</sup>
Armed Robbery 3:Defendant 1	<b>9</b> <sup>2</sup>		<b>14</b> <sup>36</sup>
Armed Robbery 3:Defendant 2	<b>12</b> <sup>1</sup>		<b>20</b> <sup>37</sup>
Armed Robbery 3:Defendant 3			<b>30</b> <sup>39</sup>
Sexual Assault 1:Defendant 1	<b>3</b> <sup>8</sup>	<b>4</b> <sup>49</sup>	<b>5</b> <sup>2</sup>
Sexual Assault 1:Defendant 2	<b>4</b> <sup>10</sup>	<b>5</b> <sup>15</sup>	<b>5</b> <sup>35</sup>
Sexual Assault 1:Defendant 3	<b>8</b> <sup>3</sup>	<b>7.5</b> <sup>2</sup>	<b>8</b> <sup>49</sup>
Sexual Assault 2:Defendant 1	<b>5</b> <sup>3</sup>	<b>5</b> <sup>7</sup>	<b>6</b> <sup>45</sup>
Sexual Assault 2:Defendant 2	<b>3</b> <sup>1</sup>	<b>5</b> <sup>1</sup>	<b>10</b> <sup>51</sup>
Sexual Assault 2:Defendant 3			<b>15</b> <sup>52</sup>
Sexual Assault 3:Defendant 1	<b>7</b> <sup>15</sup>	<b>8</b> <sup>36</sup>	<b>5</b> <sup>13</sup>
Sexual Assault 3:Defendant 2	<b>4</b> <sup>3</sup>	<b>8</b> <sup>4</sup>	<b>6.5</b> <sup>48</sup>
Sexual Assault 3:Defendant 3	<b>10</b> <sup>3</sup>	<b>10</b> <sup>2</sup>	<b>12</b> <sup>49</sup>
Street Level Drug Dealer 1	<b>5</b> <sup>6</sup>	<b>4</b> <sup>49</sup>	<b>2</b> <sup>2</sup>
Street Level Drug Dealer 2	<b>3</b> <sup>20</sup>	<b>5</b> <sup>34</sup>	<b>3</b> <sup>11</sup>
Street Level Drug Dealer 3	<b>5</b> <sup>3</sup>	<b>5</b> <sup>5</sup>	<b>5</b> <sup>46</sup>
Drug House Dealer 1	<b>5</b> <sup>11</sup>	<b>5</b> <sup>20</sup>	<b>4.5</b> <sup>30</sup>
Drug House Dealer 2			<b>10</b> <sup>51</sup>
Drug Dealer 1			<b>10</b> <sup>51</sup>

  

Truth-In-Sentencing				
Probation			Prison	
Stayed		Withheld	Prison Years	E.S. Years
Prison Years	E.S. Years	Probation Years		
<b>2.5</b> <sup>8</sup>	<b>3</b> <sup>8</sup>	<b>4</b> <sup>39</sup>	<b>2</b> <sup>4</sup>	<b>5</b> <sup>4</sup>
<b>4</b> <sup>3</sup>	<b>5</b> <sup>3</sup>	<b>6</b> <sup>2</sup>	<b>3</b> <sup>44</sup>	<b>4</b> <sup>44</sup>
			<b>6</b> <sup>48</sup>	<b>5</b> <sup>48</sup>
<b>3</b> <sup>14</sup>	<b>3</b> <sup>14</sup>	<b>5</b> <sup>28</sup>	<b>2.5</b> <sup>8</sup>	<b>4.5</b> <sup>8</sup>
<b>4</b> <sup>3</sup>	<b>5</b> <sup>3</sup>	<b>6</b> <sup>3</sup>	<b>3</b> <sup>43</sup>	<b>4</b> <sup>43</sup>
<b>5</b> <sup>1</sup>	<b>5</b> <sup>1</sup>	<b>3</b> <sup>1</sup>	<b>7</b> <sup>44</sup>	<b>5</b> <sup>44</sup>
<b>3</b> <sup>7</sup>	<b>3</b> <sup>7</sup>	<b>3</b> <sup>40</sup>	<b>1</b> <sup>4</sup>	<b>4</b> <sup>4</sup>
<b>4</b> <sup>3</sup>	<b>4</b> <sup>3</sup>	<b>6</b> <sup>3</sup>	<b>2</b> <sup>43</sup>	<b>4</b> <sup>43</sup>
<b>4</b> <sup>1</sup>	<b>4</b> <sup>1</sup>		<b>5</b> <sup>47</sup>	<b>5</b> <sup>47</sup>
<b>4.5</b> <sup>10</sup>	<b>4</b> <sup>9</sup>	<b>6</b> <sup>21</sup>	<b>3</b> <sup>24</sup>	<b>6.5</b> <sup>24</sup>
<b>3</b> <sup>3</sup>	<b>3</b> <sup>3</sup>	<b>6</b> <sup>5</sup>	<b>5</b> <sup>42</sup>	<b>5</b> <sup>42</sup>
			<b>10</b> <sup>48</sup>	<b>10</b> <sup>48</sup>
<b>7</b> <sup>2</sup>	<b>8</b> <sup>2</sup>	<b>5</b> <sup>2</sup>	<b>5</b> <sup>46</sup>	<b>8</b> <sup>46</sup>
			<b>10</b> <sup>48</sup>	<b>10</b> <sup>48</sup>
			<b>15</b> <sup>47</sup>	<b>10</b> <sup>47</sup>
			<b>9.5</b> <sup>48</sup>	<b>10</b> <sup>48</sup>
		<b>25</b>	<b>12</b> <sup>48</sup>	<b>10</b> <sup>48</sup>
			<b>20</b> <sup>47</sup>	<b>10</b> <sup>47</sup>
<b>3</b> <sup>7</sup>	<b>2</b> <sup>7</sup>	<b>5</b> <sup>25</sup>	<b>2</b> <sup>9</sup>	<b>6.5</b> <sup>9</sup>
<b>4.5</b> <sup>6</sup>	<b>3.5</b> <sup>6</sup>	<b>6</b> <sup>4</sup>	<b>3.5</b> <sup>29</sup>	<b>5</b> <sup>29</sup>
<b>4</b> <sup>1</sup>			<b>8</b> <sup>36</sup>	<b>10</b> <sup>36</sup>
<b>10</b> <sup>1</sup>	<b>5</b> <sup>1</sup>	<b>10</b> <sup>1</sup>	<b>5</b> <sup>35</sup>	<b>7</b> <sup>35</sup>
<b>3</b> <sup>1</sup>	<b>4</b> <sup>1</sup>		<b>10</b> <sup>37</sup>	<b>10</b> <sup>37</sup>
			<b>15</b> <sup>37</sup>	<b>10</b> <sup>37</sup>
<b>5</b> <sup>5</sup>	<b>5</b> <sup>5</sup>	<b>8</b> <sup>12</sup>	<b>5</b> <sup>21</sup>	<b>10</b> <sup>21</sup>
<b>6.5</b> <sup>2</sup>	<b>4.5</b> <sup>2</sup>		<b>6</b> <sup>35</sup>	<b>10</b> <sup>35</sup>
			<b>15</b> <sup>37</sup>	<b>15</b> <sup>37</sup>
<b>3</b> <sup>8</sup>	<b>4</b> <sup>8</sup>	<b>5</b> <sup>25</sup>	<b>1</b> <sup>8</sup>	<b>5</b> <sup>8</sup>
<b>3</b> <sup>9</sup>	<b>5</b> <sup>10</sup>	<b>5</b> <sup>12</sup>	<b>2</b> <sup>19</sup>	<b>5</b> <sup>19</sup>
<b>3</b> <sup>1</sup>	<b>5</b> <sup>1</sup>	<b>7.5</b> <sup>2</sup>	<b>4</b> <sup>35</sup>	<b>5</b> <sup>35</sup>
<b>3</b> <sup>5</sup>	<b>5</b> <sup>5</sup>	<b>5</b> <sup>9</sup>	<b>3</b> <sup>27</sup>	<b>5</b> <sup>27</sup>
<b>4</b> <sup>1</sup>	<b>6</b> <sup>1</sup>	<b>5</b> <sup>1</sup>	<b>7</b> <sup>36</sup>	<b>5</b> <sup>36</sup>
		<b>8</b> <sup>1</sup>	<b>10</b> <sup>37</sup>	<b>10</b> <sup>37</sup>

The figures in this table are based on the responses of 87-90 judges surveyed.

The difference in responses reflects a small number of forms that were completed incorrectly.

**The bold numbers represent median length of sentences.**

**The italic numbers represent number of responses.**

## Appendix K

### RESULTS OF JUNE 16, 1999 SURVEY

	Current Law				Truth-In-Sentencing					
	Probation Years			Prison Years	Probation Years				Prison Years	
	Withheld	Stayed Probation	Prison		Withheld	Stayed Probation	Prison	E.S.	Prison	E.S.
Burglary 1;Defendant 1	<i>57</i> <b>4</b>	<i>39</i> <b>4</b>	<b>4</b>	<i>9</i> <b>3</b>	<i>54</i> <b>4</b>	<i>40</i> <b>4</b>	<b>2.75</b>	<b>2.5</b>	<i>10</i> <b>1</b>	<b>2</b>
Burglary 1;Defendant 2	<i>0</i>	<i>4</i> <b>4</b>	<b>7</b>	<i>100</i> <b>7</b>	<i>0</i>	<i>2</i> <b>4.5</b>	<b>3.5</b>	<b>4</b>	<i>103</i> <b>5</b>	<b>4</b>
Burglary 2;Defendant 1	<i>61</i> <b>4</b>	<i>38</i> <b>4</b>	<b>3</b>	<i>4</i> <b>4</b>	<i>54</i> <b>4</b>	<i>43</i> <b>4</b>	<b>3</b>	<b>2</b>	<i>7</i> <b>2</b>	<b>5</b>
Burglary 2;Defendant 2	<i>0</i>	<i>5</i> <b>5</b>	<b>5</b>	<i>99</i> <b>6</b>	<i>0</i>	<i>3</i> <b>5</b>	<b>4</b>	<b>3</b>	<i>102</i> <b>4</b>	<b>3</b>
Armed Robbery 1;Defendant 1	<i>9</i> <b>8</b>	<i>14</i> <b>8</b>	<b>7.5</b>	<i>84</i> <b>6</b>	<i>8</i> <b>8</b>	<i>11</i> <b>5</b>	<b>5</b>	<b>5</b>	<i>89</i> <b>4</b>	<b>5</b>
Armed Robbery 1;Defendant 2	<i>0</i>	<i>3</i> <b>10</b>	<b>20</b>	<i>103</i> <b>15</b>	<i>0</i>	<i>0</i>			<i>107</i> <b>10</b>	<b>7</b>
Armed Robbery 2;Defendant 1	<i>0</i>	<i>3</i> <b>10</b>	<b>20</b>	<i>103</i> <b>12</b>	<i>0</i>	<i>4</i> <b>5</b>	<b>7</b>	<b>6</b>	<i>102</i> <b>7</b>	<b>5</b>
Armed Robbery 2;Defendant 2	<i>0</i>	<i>2</i> <b>15</b>	<b>35</b>	<i>101</i> <b>24</b>	<i>0</i>	<i>1</i> <b>10</b>	<b>17</b>	<b>10</b>	<i>103</i> <b>15</b>	<b>10</b>
Sexual Assault 1;Defendant 1	<i>69</i> <b>5</b>	<i>31</i> <b>5</b>	<b>5</b>	<i>4</i> <b>5</b>	<i>68</i> <b>5</b>	<i>31</i> <b>5</b>	<b>3</b>	<b>3</b>	<i>5</i> <b>3</b>	<b>3</b>
Sexual Assault 1;Defendant 2	<i>3</i> <b>10</b>	<i>11</i> <b>5</b>	<b>8</b>	<i>93</i> <b>8</b>	<i>5</i> <b>10</b>	<i>6</i> <b>5</b>	<b>4.5</b>	<b>5</b>	<i>94</i> <b>5</b>	<b>5</b>
Sexual Assault 2;Defendant 1	<i>29</i> <b>10</b>	<i>19</i> <b>10</b>	<b>6</b>	<i>56</i> <b>8</b>	<i>24</i> <b>10</b>	<i>18</i> <b>10</b>	<b>3.5</b>	<b>5</b>	<i>63</i> <b>5</b>	<b>6</b>
Sexual Assault 2;Defendant 2	<i>1</i> <b>10</b>	<i>5</i> <b>15</b>	<b>12</b>	<i>99</i> <b>20</b>	<i>1</i> <b>10</b>	<i>3</i> <b>10</b>	<b>30</b>	<b>20</b>	<i>101</i> <b>10</b>	<b>10</b>

The figures in this table are based on 107 responses of prosecutors surveyed.

Bold numbers are median sentence lengths. Italicized numbers are number of responses in each cell.

## Appendix L

### Truth in Sentencing Media Plan

#### Press Conferences (7 statewide)

Media Market	Counties (press conference location in bold)
Duluth/Superior	Ashland, Bayfield, <b>Douglas</b> , Iron, Sawyer, Washburn
Wausau/Rhineland	Adams, Clark, Forest, Langlade, Lincoln, <b>Marathon</b> , Oneida, Portage, Price, Taylor, Vilas, Wood
Green Bay/Appleton	<b>Brown</b> , Calumet, Door, Florence, Fond du Lac, Green Lake, Kewaunee, Manitowoc, Marinette, Menominee, Oconto, Outagamie, Shawano, Waupaca, Waushara, Winnebago
Mpls/St. Paul	Barron, Burnett, Dunn, Pepin, Pierce, Polk, <b>St. Croix</b>
La Crosse/Eau Claire	Buffalo, Chippewa, Crawford, <b>Eau Claire</b> , Jackson, La Crosse, Monroe, Rusk, Trempealeau, Vernon
Madison	Adams, Columbia, <b>Dane</b> , Dodge, Grant, Green, Iowa, Juneau, Lafayette, Marquette, Richland, Rock, Sauk
Milwaukee	Dodge, Jefferson, Kenosha, <b>Milwaukee</b> , Ozaukee, Racine, Sheboygan, Walworth, Washington

#### Needs:

##### Press kit materials

- speaking points;
- plain-English (graphic) summary of key changes;
- case scenarios then/now;
- list of contacts, areas of expertise, phone/fax/emails;
- video graphics for TV?

##### Press conference presenters

- committee experts;
- local judge (others?)

##### Press conference locations

- courthouses (need courtroom or other indoor space)

##### To coincide with press conferences<sup>1</sup>

- radio shows;
- editorial board visits or guest columns;
- morning/noon/Live at Five talk shows

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<sup>1</sup> Note: These would take place on the same day as the press conference, but in other counties in the ADI to minimize cannibalism.

## *Appendix M*

### WISCONSIN ADULT INMATE POPULATION BY RACE/ETHNICITY & GENDER DECEMBER 31, 1998

Race/ Ethnicity	Inmate Population			Race/Ethnicity as a Percentage of Total Prison Population	State Population Based on 1996 Estimates *		
	Male	Female	Total		State Population	Percent of State Population	Percent of Race/ Ethnic Group in Prison
<b>White</b>	7344	483	7827	41.96%	4646124	90.04%	0.17%
<b>Black</b>	8326	616	8942	47.94%	284368	5.51%	3.14%
<b>Native American</b>	412	43	455	2.44%	45277	0.88%	1.00%
<b>Hispanic</b>	1185	48	1233	6.61%	109880	2.13%	1.12%
<b>Asian</b>	88	3	91	0.49%	74146	1.44%	0.12%
<b>Other</b>	8	1	9	0.05%	**	**	**
<b>No Data</b>	91	6	97	0.52%	**	**	**
<b>Total</b>	17454	1200	18654	100%	5159795	100%	0.36%

\* Percentages are nearly identical to 1990 Census figures.  
1996 Estimates are the latest racial breakdown figures available.

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August 24, 1999

The Honorable Thomas Barland, Chair  
Wisconsin Criminal Penalties Committee  
721 Oxford Avenue  
Eau Claire, WI 54703-5481

Dear Judge Barland:

I make this statement to explain my vote in favor of the Committee's report.

I voted for the proposal simply because it is better than having made no proposal to the legislature at all.

This legislature passed what it called "Truth-in-Sentencing" legislation with little debate; and with no notion of its cost. Rather than having first assembled a committee such as ours, and asked for its recommendation; it mandated the changes to the law, and asked our advice about its inevitable implementation. We were given insufficient time within which to complete the task. No other state having similar legislation has required such hasty implementation.

The legislature ought be cautioned that our report reflects that haste.

The computer model which was developed to aid in projecting the cost of implementing the legislation is, as yet, untested. Moreover, like any model, it is dependant upon the data fed into it. Our data is incomplete. The systems of the Department of Corrections and C-CAP are incompatible. Thus, our model was fed data from Department of Corrections; but not from C-CAP. Its projection of cost is, therefore, inaccurate and must necessarily understate the true cost. That model suggests that the cost of the Department of Correction will increase to over a half billion dollars by the year 2005.

The true cost will be far greater.

Every state which has implemented such legislation has experienced a sharp and substantial increase in the cost of corrections. Many of those did so without, first, having built new prisons.

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Wisconsin has been building new prisons for almost a decade. They are already overcrowded. This legislation has demanded; and our report supports, that the state invest in more bricks and mortar. Precisely at a time when we ought not be doing so.

For well over a decade, crime rates have been falling; throughout the nation and throughout the state. In all categories of offense. Though it is not a perception nurtured by the media, we are actually safer on our streets today than we were 10 years ago. No credible study attributes this to the prison building boom.

At the same time, the children of the baby boomers are about to enter college. It ought be the second largest wave of college bound students in the State's history. The needs of the University system will be great.

The decision to invest in unnecessary bricks and mortar for prisons will, necessarily, cut short our ability to invest in our children's educations.

The Committee has recommended a substantial investment in extended supervision. However, as Professor Dickey has pointed out, that investment will be meaningless unless an equal investment is made to upgrade probation services and parole services for the significant number of "old law" offenders.

As we learned from many judges, especially in Milwaukee, there is a lack – if not crisis – of confidence in probation and parole services. While I do not agree that that lack of confidence is entirely deserved, it is nonetheless there. And it creates a cycle which cannibalizes the Department of Correction's resources: because a judge lacks confidence in probation and parole, the judge sentences to prison, rather than probation; and to extended prison in order to delay parole. This requires the Department to bear the expense of incarceration. That expense is so great that resources must be diverted from probation and parole to create the bed space. That diversion of funds from probation and parole adversely affects the quality of service which it can provide. That, in turn, causes the judge to have even less confidence.

The legislature must belly-up to the bar and break that cycle. If it fails to make a significant investment in probation, parole and extended supervision; it will doom us to building more prisons to house more of our citizens for longer periods of time.

The Committee's report does not address the problem of sentences which accomplish nothing other than to shift costs from a county to the state.



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Milwaukee's treatment of drug offenders provides an excellent example. Drug offenders from Milwaukee consume a disproportionate amount of Department of Corrections bed space. The Milwaukee County District Attorney's Office explained to our Committee that every offender who perpetrates a "street sale" of drugs in Milwaukee is sent to prison. Often, this results in incarceration of the offender for less than one year. This same result could be accomplished by incarceration of the offender in the county jail for an equal period of time. That isn't done, however, because the county would have to pay the cost of that incarceration. Instead, the cost is shifted to the state. And, it has had no affect on the number of street sales of drugs. Statistics provided to us by the Milwaukee County District Attorney's Office demonstrate that approximately the same number of offenders are arrested each year for this offense. In other words, the state has been paying approximately \$20,000.00 per offender per year to have no affect on the incidence of drug sales.

The new legislation, as implemented by our guideline recommendations, will give unlimited possibilities for counties to shift the cost of corrections to the state; and thereby increase, even more than projected, the cost of corrections. For example, a judge may currently withhold sentence of an offender, place the offender on probation and, as a condition of probation, order the offender to be incarcerated in a county jail for up to one year. This option will remain in effect after the implementation of the new legislation. However, the new legislation will also allow a judge to sentence the offender to one year in prison, to be followed by a term of extended supervision. The latter option will affect no real difference in the incarceration time of the offender. It will, however, enable the county to shift the cost of incarceration from the county to the State. Moreover, in doing so, it will prevent the offender from having Huber privileges; thereby, causing the loss of employment. A questionable result when, most would agree, a steady job is one of the greatest inhibitors to re-offense.

The grid system which the guidelines adopt attempt to make simple, and two dimensional, what has always been a complex task. Regardless, however, of whether one supports or opposes a grid system, there is no doubt that it will, too, increase the costs of correction substantially. The Committee had little rationale for the numbers that went into the grid cells. A number of judges apparently met for one day, were given fictitious scenarios of offenses, did not have the benefit of the particulars of the offenses or offender, or of their impact upon victims, and had no command of distinctive facts which are usually brought to the court's attention by the advocates and the presentence investigating agent. This simplistic exercise formed the basis for the numbers which went into the cells. Those numbers increased substantially the range of sentence and reduce, equally substantially, the opportunity for a court to give probation. If sentencing judges adhere to these recommendations, more beds will have to be built.

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To understand that this legislation, and our Committee's recommendations for implementation, will be too expensive to deliver "truth" in sentencing, one need only look at the Committee's recommendation concerning geriatric prisoners.

The members of the Committee know that sentences under the new law will increase to such a degree that the State will develop a significant geriatric population. There are no accurate figures for current costs of housing a geriatric prisoner. The federal government, which has had its sentencing guidelines since 1987, is beginning to experience the problem; and, resultantly, is now showing an interest in assessing its cost. Most authors suggest that the cost far exceeds that of housing any citizen in the finest geriatric facility available.

The Committee ought have been given the time to develop guidelines which would not call for the incarceration of people for so long that the act of incarceration becomes meaningless. Instead, however, the Committee's recommendations permit sentencing without much regard for that factor; and provide a mechanism for releasing geriatric prisoners before their sentence has been served. If the impetus for the "Truth-in-Sentencing" legislation was to create a system where everyone knew the term of imprisonment; this recommendation flies in the face of that purpose. What it really is is another example of cost shifting. The belief of many Committee members was that, upon release, the financial responsibility for taking care of the geriatric would fall upon the federal government. What was unspoken was that, more likely, that cost will fall upon the county to which the prisoner is returned. That may make a difference to the various units of government involved; but it makes no difference to the tax payer. In the end, the citizens of the state of Wisconsin will pay the price: whether through their property tax, their state taxes or their federal taxes. The legislature, and any permanent sentencing commission, ought be more interested in providing judges with guidelines which do not permit incarceration of offenders beyond necessity.

Too, there ought be grave concern about another of the effects which the cost of our recommendations will have upon the State and its citizens.

Every state which has enacted truth-in-sentencing legislation has experienced the same phenomenon. The parole of old law offenders (those incarcerated prior to January 1, 2000) will become the only effective safety valve for prison overcrowding. Our recommended guidelines will ensure that more non-violent offenders will be incarcerated in prison. To make room for them in an already overtaxed prison system, it will be necessary to parole old law offenders. Thus, to make room for non-violent offenders, we will be paroling violent offenders. Until we run out of them to parole. And then, the system will begin to bulge at its seams.

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Every state which has implemented similar legislation has experienced this phenomenon. Wisconsin will be no different; no matter the protests of many to the contrary. It makes no sense, and it's dangerous.

Nor do our recommendations do anything of substance to address the disparity with which we treat African Americans in sentencing. I agree wholly with the observations of Professor Dickey in that regard. The judicial system can only deal with the people brought to it. As long as we disproportionately select African Americans to come into the system, the effect of that disparity will play out within the corrections system.

Finally, the Committee's recommendations for the composition of a new, permanent sentencing commission, short change the citizenry. Members of the public, especially those who are concerned about the cost of corrections, have every right to be directly represented on the commission. Our Committee had too few representatives from the private sector; and all too many from the judicial branch. Every citizen, and not just government employees, has a right to be concerned about the implications of this legislation, and about how offenders are sentenced. While judges and attorneys can provide insight, they are no better placed than anyone else to have ideas, or make decisions. Indeed, the problems which will evolve from this legislation will be many; and it would be wise to have the thoughts of many who come from outside the system; especially those of businessmen.

Respectfully Submitted,

Stephen P. Hurley

## **Response to the Concurrence of Atty Stephen P. Hurley**

While I agree with some of Mr. Hurley's statements, there is one I must reluctantly correct. In his last paragraph he criticizes the makeup of the proposed Sentencing Commission as having too many members from the judicial branch and not enough public citizens.

We propose a 17 member commission, only two of whom must be judges. Count three members of the judicial branch if you include the state court administrator or his designee, who serves ex officio along with the Secretary of the Department of Corrections and the head of the Parole Commission, thus bringing the total membership of the Sentencing Commission to 20. In addition to the judicial branch members, there will be four attorneys each of whom should be included on any such commission: the state Attorney General, the state Public Defender, a district attorney, and a private defense attorney. All the others, eleven in number, can be public members. At least two public members are required. Any way you analyze it, the appointing authorities can insure that public members are in the majority.

Respectfully submitted,

Thomas H. Barland, Chair

## **Dissenting Statement of Walter J. Dickey**

I cannot support the recommendations of the Criminal Penalties Study Committee and must therefor dissent from its Report. Here is a brief account of why the Committee's recommendations are seriously flawed and what I think should be done instead.

Despite the able leadership of Judge Thomas Barland, the Committee's report and recommendations opt for business-as-usual, at a moment when the future of sentencing in Wisconsin is wide open, and its past is an increasingly costly embarrassment. The recommendations, if adopted, will encourage and permit prosecutors, defense lawyers, judges and correctional authorities to continue to do what they currently do. This is often the fate of reforms but business-as-usual in sentencing would be a particularly unattractive option for a Wisconsin that understandably yearns for more justice and more public safety. The problem with these proposals is not just that they would accomplish so little, it is that they would lead the state down a ten-year detour—an unnecessary journey on which we would muddle along, imagining that some future Commission will find a way for the Committee's grids to solve our problems, coming no closer than we are today to a truthful, effective system for the preservation of public safety and the assurance of just punishment. The recommendations could make things much worse, but in any case the detour will be an expensive one — for taxpayers, for victims, for offenders, and for the rule of law which is already in some disrepute. Eventually, our children will have to take up the issues the Committee avoids.

*The Obstacles to Truth.* Truth is not honored in the current system, when a judge says “ten years,” and no one can know what will happen thereafter except that the offender will be confined for at least 2 years and six months. But neither is truth honored when a judge says “probation” and no one can know what, if anything will be done by the offender or the state, and whether the offender will be held accountable in any way. Our desire for truth in sentencing is advanced in only the most limited way by the recommendations of this Committee: after the effective date of the statute, anyone can know the date on which an offender who is imprisoned will be released, and anyone can

know the date on which such an offender will no longer be on extended supervision (which turns out to be parole supervision by another name). Neither the statute nor the Committee's proposals, if adopted, requires or facilitates truthfulness about the *content* of a sentence, a term of probation, or a period of extended supervision. Without truth about sentence content, there is little chance that offenders or correctional authorities will be held accountable for compliance with the court's intention in imposing sentence — or with our interests in its proper execution. Neither the statute nor the Committee's proposals will bring consistency to prosecutors' selection of the crime or crimes to charge, and they altogether ignore the plea-bargaining by which the vast bulk of sentences are actually decided. Offenders who are the same in all relevant respects, and who do the same crime, will continue to be charged, convicted and sentenced substantially differently, without any reason being required or given.

The Committee's Report and recommendations do not purport to clarify the basis for revocation of extended supervision or reinstatement on it, and do not advance principles or rules for deciding the duration of either —necessary first steps in assuring even-handed and effective use of this new legal status.

What remains of "truth" in sentencing, under such a regime? A committee devoted to truth in sentencing would address all of these obstacles to truth, daunting though they may be. Let me explain:

#### I. The Criminal Code

Wisconsin's Criminal Code is a jumble. It should be fixed, because the rule of law demands it and because we cannot bring truth to the criminal justice system without the substantive anchor of a well considered criminal code. The selection of charges by prosecutors will remain unguided by principle and unconstrained by substantive or procedural law. Under the current system in Wisconsin, untouched by the Committee's recommendations, a single criminal act yields any number of charges in one county while in its neighbor only one charge results. This makes a mockery of any claim to even-handed punishment, because punishment flows from charge. Principled and consistent charging decisions require a principled and orderly substantive criminal code.

The Chair's response to my views attempts to characterize my comments about prosecutorial discretion as a radical proposal that prosecutors' powers should be circumscribed. Perhaps they should, but my point here is the more limited one that consistent sentencing cannot reasonably be promised by guidelines which take no account of disparities in prosecution practices around the state.

The Classification Subcommittee's hard work doesn't fix the jumble of the code. It does hold the promise of stemming the rising tide of confusion. It stratifies felonies over a larger spectrum of classes, repeals and re-characterizes most penalty enhancers as facts to be considered at sentencing, repeals presumptive minimums, penalty doublers, and mandatory consecutive sentences, while attempting to restore fault to its proper place in the classification of crimes. The legislature would not make a mistake in adopting its recommendations, but it would be a serious mistake to substitute this first step for the real reform the Subcommittee's work so vividly demonstrates Wisconsin needs.

## II. Judicial Discretion and the Committee's Grids

Adopting the Committee's recommendations leaves judicial discretion at sentencing exactly as the Committee found it: The sentencing decision (and even the decision whether to impose sentence or use probation) is left entirely to the judge, within the broad range of lawful punishments for the crime or crimes of conviction. This is hard to square with the principle that we are governed by a rule of law, not men. The difficulty is not much reduced by appending checklists of possibly relevant considerations.

I believe the discretion of sentencing judges should be guided, toward punishing fairly and consistently and toward delivering maximum public safety commensurate with the correctional resources used. But the Committee has recommended cumbersome forms and grids and some (occasionally insightful) commentary – the net effect of which is to leave judicial discretion unguided and unconstrained. The sentencing procedures it recommends do not require a judge to make explicit the findings of fact upon which he or she concludes that a particular sentence is appropriate – they do not require any findings of fact at all. ***But if sentences are not based on facts, they cannot be truthful in any***

*important sense. If they are based on fact, it is a strange truth that does not require the facts to be clearly stated.*

At the heart of the “guidance” it recommends for Wisconsin judges, the Committee places a series of 3-by-3 grids, in the cells of which are found — what? The Committee’s proposed grids are based on nothing more than the impressions of a day long meeting of 18 judges, who were not given real cases for their “exercise,” who did not have the benefit of specific facts, who saw no real victims or real offenders, and who had no benefit of the advocacy that defense and prosecuting attorneys provide.

Every sentencing judge knows that the sentencing decision requires individualized fact finding, the application of purpose and principle to these facts, and higher level reasoning and thinking to arrive at a just sentence—one deserved by the offender, attentive to the victim, and suited to our interest in public safety. These complex decisions are not made easier, more predictable, more fair, or more likely to create public safety by simplistic grids.

### III. The Computer “Model”

There is a seductive quality to computer models, which inspire more confidence than they usually deserve. The model used by the Committee is only as good as the data entered, the logic of the formulas that manipulate the data entered, the questions asked of it, and the willingness of sentencing judges to sentence in accordance with the policies modeled. Even the most optimistic members of the Committee have grave doubts about the accuracy of the model developed, because of the lack of adequate data, the lack of documentation which could reveal to them how the model produces its results, and the lack of time to use the model to test the effects of different approaches to sentencing. Because of this lack of confidence, the Committee cannot predict Wisconsin’s requirements for prison beds and other correctional resources under the Committee’s recommendations — or under any other scenario. This may not be as serious a problem as it sounds, because the statute makes compliance with any guidelines formulated by the Committee purely voluntary for judges, and the most likely model of their future sentencing behavior is what they have done in the recent past.



Despite members' reservations about this \$60,000 "Model," the Committee urges the state to adopt it for use by a successor commission, to predict Wisconsin's future correctional resource requirements. That recommendation seems premature, at best.

For example, one of the modeled scenarios, which was created without significant committee discussion and is presented by the Committee without much qualification, purports to answer the question: what changes in the demand for correctional resources should be expected if violent offenders serve to the current average mandatory release date for each crime, and non-violent to the current average of time served to first release. As modeled, this politically popular scenario grows the prison population to nearly 30,000 in the next decade. If, as many suspect and some desire, a more realistic scenario is that the prison phase of bifurcated sentences will rise well beyond historical time served — in which case, the Committee's recommendations will surely increase expenditures on imprisonment well beyond this hopeful estimate.

#### IV. Is There To Be No End to Probation As We Know It?

The Committee recommends strengthening probation, as it should. However, its lack of confidence that this will occur is demonstrated by its failure to adjust its sentencing grids to reflect the existence of probation supervision in which courts could have more confidence than in the past. It is also demonstrated by the absence, in the one-day sentencing exercise from which the grids were derived, of any suggestion that probationary sentences might be made more desirable by the investment the Committee recommends. The driving rationale of the Committee's "guidelines" for courts under truth in sentencing is its explicit preference that future sentencing practice replicate current practice. It is hard to believe the result would be more just or more effective sentences.

#### V. Extended Supervision

The proposals intended to make the extended supervision phase of bifurcated sentences a substantial asset in securing more public safety in places (like Milwaukee) where probation and parole are in embarrassing disrepair, look almost cynical. There will be not a single offender on extended supervision (ES) during the first year after the effective date for truth in sentencing, and only a handful during the second year. (To

reach ES, an offender must have served a year in prison on a sentence imposed for a crime committed after the statute's effective date.) This handful will be supervised at the rate of 1 agent to 25 offenders, if the Committee's recommendations are adopted. At the same time, there will be over 80,000 offenders (half of them felons) on probation and parole in Wisconsin communities during those same years. They pose a far greater public safety threat, and promise to be revoked to prison in large numbers by victimizing Wisconsin citizens, unless they are much more actively supervised than they have been to date. How can the Committee responsibly recommend intensive supervision for the handful on ES, while leaving the 80,000 without the supervision they and we require?

#### VI. Race and Drug Crime

Research<sup>1</sup> forces us all to acknowledge that the use of controlled substances is distributed pretty evenly through our society. About the same percentage of white teenagers in the suburbs, white teenagers in the rural areas, and black teenagers in the city abused drugs last year. The low visibility of the markets in which middle-class users get and deliver their drugs has two consequences of importance. First, in white residential areas there is relatively little drug enforcement—arrest, prosecution, conviction and sentencing for drug crimes. Second, as a consequence, minorities (particularly African-Americans) are much more likely to be arrested, prosecuted, sentenced and imprisoned for drug crimes than whites. The end result is gross racial disparity in imprisonment for drug crimes.

It is said that the racial skewing of the prison population is maybe embarrassing, but an unavoidable consequence of even-handed enforcement of the law. I think not. It think it is embarrassing *particularly because* even-handed enforcement would eliminate it. The truth is that even-handed enforcement is politically unacceptable to drug-users and their family members in suburban and rural areas.

It is said that concentration of enforcement in places where African-Americans are concentrated is desirable, because those neighborhoods are ravaged by the very visibility of the drug trade found there, and by the greater devastation that accompanies

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<sup>1</sup> See, *Preliminary Results, 1996 National Household Survey on Drug Abuse* (Washington, D.C.:

drug use in already-unstable persons and families. Indeed, African-Americans from these neighborhoods can be heard to call for *more* drug enforcement there, and *more* imprisonment of those engaged in it.

I say the African American neighborhoods burdened with street markets and drug houses deserve sustained governmental efforts to relieve them of those burdens. I say that arrest prosecution conviction and prison sentences are impoverished responses, ineffective against these problems. I say that they are politically popular in the areas subjected to them not because they are effective—or even thought to be effective—but because they are the only governmental effort being offered, and the only evidence that the larger society condemns the behavior. Testimony to this committee from the dedicated public servant who has long had responsibility for drug prosecutions in Milwaukee made it clear that, despite years of effort and thousands of prison sentences, the price of crack continues to fall. If the Milwaukee neighborhoods beset by street drug markets are to get relief, it is not likely to be because sentencing in drug cases suppresses the markets.

If the familiar pattern of drug enforcement and sentencing were achieving the relief African-American neighborhoods in Milwaukee deserve, and if there were no more effective way to attack the drug markets found there, this Committee might want to counsel acceptance of the resulting racial imbalance in prison sentences. But if our sentencing practices are not having the desired effect, and if there are more plausible ways to attack both individual addiction and dangerous street drug market activity, then this Committee should expose that truth and recommend that drug sentences in the future be shaped by realistic assessment of their effects—and by proper distaste for racial disparity in rates of imprisonment.

#### VII. Cost.

The Report is remarkably silent about cost, raising it near the end and giving the subject a half page. This may be because the Committee has not a clue about what its recommendations will cost—despite its \$60,000 computer model. Or it may be that the

Committee expects no change in practice, and that the cost of Corrections in the future will be managed by the use of parole (to release “Old World” inmates and those now on probation who will be revoked to prison in coming years). Because the basis for the Committee’s guidelines are so vague, and the computer model devoid of explanation how it reached its projections, I can only guess that the cost to Wisconsin will be substantially greater than current cost. The committee owes the Legislature and the people of Wisconsin a specific estimate of what its recommendations will cost, and an understandable explanation of how it reached its estimates. Or it owes them an unambiguous acknowledgment that the power to set prisoners’ release dates is being shifted from parole board to sentencing judge without anyone knowing what the effects will be—on our increasingly volatile correctional facilities (in and outside Wisconsin), and on our state’s budget.

#### **What Can Wisconsin Do?**

There are several choices.

- A. Adopt the Criminal Penalties Study Committee proposals. This would be a serious error for the reasons I have briefly outlined.
- B. Adopt the proposals, but emphasize their temporary status, leaving to a future sentencing commission the job of fixing them. This may be attractive but is overly optimistic. It will not happen that way. To implement the proposed system and then change it would burden Wisconsin with three incompatible systems of sentencing law, including the existing one under which most prisoners, probationers and parolees will be governed for the foreseeable future. The prospective chaos of managing three distinct correctional populations at the same time will create overwhelming pressure to do no more than tinker with the Committee’s recommendations if they are adopted now.
- C. Make the Committee’s recommendations, including the grids, mandatory, as many states have done. Despite the damage this would do, it will be attractive to some, because it might make more predictable the state’s future demand for prison space and other correctional resources. But “locking in” the many deficiencies of the Committee’s scheme is, for the reasons given above, highly undesirable for public safety, justice and fiscal responsibility.
- D. Do nothing. This is not as bad a choice as might first appear. The *McCleary* case, the foundation upon which sentencing law in Wisconsin

rests, is quite sound, if properly understood and followed.<sup>2</sup> If Wisconsin were to build the automated data capacity it has needed for some time, and if judges were provided with the information they require to adhere properly to *McCleary*, they would do a better job of sentencing for public safety and just punishment, and would use correctional resources more wisely, then they are likely to do if the Committee's recommendations are adopted.

Mine is not a plea for repeal of Truth in Sentencing. We need truth. We need more of it, not less. We need reform that will promote truth and public safety. The Committee has not come up with it.

#### What Should be Done

Truth in sentencing must be grounded in a criminal code that does not invite widely different charges for the same conduct. Fifty years has passed since Wisconsin led the nation with the first modern criminal code, and the debris that has accumulated in it cannot be cleared away by a committee as time-limited as this Committee was. But until a careful revision is done, the code itself will undermine everything else done to advance truth in sentencing. ***Truth in sentencing requires that Wisconsin get on with this revision of the code.***

Truth in sentencing at least suggests that sentences will be based on fact, in a way that makes the achievement of greater public safety plausible. A complete overhaul of correctional authority and resources is required, if we are to expect courts to impose sentences which, when implemented, plausibly connect our public safety purpose to the facts and circumstance of individual cases. This is not news. Detailed plans for the necessary reconfiguration were advanced in *The Report of the Governor's Task Force on Sentencing and Corrections* (1996) and in *The Report of the Intensive Sanctions Review Panel* (1998). ***Truth in sentencing requires that Wisconsin get on with these reforms in corrections.***

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<sup>2</sup> "Discretion is not synonymous with decision-making. Rather, the term contemplates a process of reasoning. This process must depend on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards." 49 Wis. 2d 263, 277 (1970).

Truth in sentencing surely requires that those imposing sentence know what facts and circumstances are relevant and that they have a good grasp on the truth about those facts in the individual case — otherwise it is folly to expect the resulting sentences to be plausible means for accomplishing either just punishment or public safety. Because no individual carries in his or her mind the sum of the state's experience in imposing and executing sentences, those who sentence need guidance about what facts are likely to be relevant in various types of cases, and about what inferences to draw from those facts when tailoring a sentence to the facts and circumstances of the case at hand. If a judge is doing the fact-finding and the reasoning that a truthful sentence requires, it is the judge who needs the guidance. If, as is more often the case than the Committee's Report reveals, defense and prosecuting attorneys are in effect deciding what facts are relevant and how those facts ought to shape a sentence they will jointly recommend to an accommodating court, then it is the advocates who need the guidance; they need guidance about what facts are likely to be relevant, and what significance they are likely to have under different circumstances — so that they can argue usefully to the court or responsibly stipulate what sentence is most likely to deliver just punishment and public safety in the case at hand. In the end, it is the same guidance, and the proper task for a sentencing commission is to provide it. A sentencing commission should gather and disseminate knowledge (and uncertainties) about the likely effects of various sentences on various types of offenders, in the varying circumstance in which they are found.

***Truth in sentencing requires a permanent commission of this kind — not a commission charged with refining the pseudo-scientific grids and mechanical checklists the Committee proposes.***

One can reasonably ask “Why bother?” Read literally, the Committee's guidelines are temporary, and responsibility for the long term lies with a permanent sentencing commission. We have not attended properly to the criminal code in nearly fifty years — one might ask why not wait another fifty? The last attempt at sentencing guidelines in this state, also in grid form, lasted for a decade and was abandoned five years ago — one might ask, how much harm would another one do? Unlimited discretion at charging and invisible plea bargaining have been with us forever and have never excited much public concern — one might ask, why stir the pot? And as taxpayers

seem willing to pay for growth in prison population from 5,500 in 1987 to over 19,000 today, perhaps they would be eager to pay for the 30,000 or more to which it will soon rise. This is the muddle to which I alluded earlier.

The answer lies, I think, in the public's desire for truth, and the opportunity provided by this moment of truth the Committee and the state now face. We need not treat the public as a child unable to handle more than a little bit of the truth. The body politic is more mature than that and, indeed, has appetite for as much truth as we are prepared to reveal. It need not be fed slogans that trigger emotion rather than thought. It should not be restricted to a diet of fast food when a more nourishing meal is at hand. It will be impatient with the suggestion that judges don't have time to find and state the facts upon which sentences are based, and the inferences they draw from those facts — particularly when what's at stake is a son's or daughter's future liberty or future safety. The public can understand that the problems of sentencing and corrections are difficult, that no easy solution will emerge, that time and patience are necessary to the creation of public value through sentencing or any other government action, and that no resolution of these questions will be perfect. If we give the public credit for the good sense I believe it has, we will take the time and make the effort to give it what it deserves.

At the heart of the objections to what I suggest is the claim that my suggestions are too ambitious, "visionary," "not politically doable," and that they would take more time than we have. This may be so. The Committee can never know what is doable, when at every turn in the road it chooses political expediency over principle. Any progress, of course, requires an ability to imagine a better world than the one business-as-usual produces. Imagination is sadly lacking from the Committee's report, and so is the possibility of progress.

August 23, 1999

## **Response to the Dissent of Walter J. Dickey**

Prof. Walter J. Dickey who has filed a dissent to this Committee's report is one of the state's most knowledgeable persons regarding sentencing. He has served as the head of the Corrections Department. He is a highly respected professor in the field of criminal law. I agree with many of his observations and suggestions. However, I disagree with certain of his premises and thus many of his criticisms of this Committee's work.

His goals are commendable. They are truly visionary. They are what every citizen concerned with truth and justice should aspire to, but what he proposes is utopian in conception and, unfortunately for our Committee's work, short on detail -- the kind of detail necessary to make a system work or to permit this Committee to make recommendations closer to what he thinks is best. In the best of all political worlds what he contemplates would take between 5 to 10 years to conceive, draft, and execute. This Committee was given just 8 months, later increased de facto to 1 year to carry out the complex but limited task of fashioning the transition from indeterminate to determinate sentencing without overwhelming the prison system.

The dissent's first criticism is that the recommendations "opt for business-as-usual." If by that is meant that the actual time served by non-violent prisoners under Trust-in-Sentencing will be no longer than such people are presently serving, the statement is accurate. Dangerous criminals should serve longer prison time, non-dangerous criminals no more prison time than at present, and fewer non-dangerous offenders need be sentenced to prison if our recommendations relating to intermediate sanctions are adopted. Our goal is to stabilize the prison population which under our present system grew 13.4% last year -- the third highest growth rate in the nation.

In the dissent's discussion entitled "obstacles to truth" the criticism is made that our proposals do nothing to facilitate "truthfulness about the content of a sentence, a term of probation, or a period of extended supervision." The dissent does not spell out what is meant by that. Neither was that concept ever presented to the Committee in such a fashion as to cause the Committee to address the problem. If by that is meant that the courts and corrections should set up goals in sentencing and then monitor the attainment of those goals, I agree that should be done. It is being done by some courts.

I agree with the dissent's conclusion that Wisconsin's Criminal Code is "a jumble." The Committee agreed. It laid the foundation for the Code's much needed revision in its classification recommendations which the dissent backhandedly endorses.

An even more puzzling criticism not brought to the Committee's attention is the statement that our proposals will not "bring consistency to prosecutors' selection of the crime or crimes to charge." We certainly discussed inconsistency in charging from one county to another, but no solution was offered and none appears in the dissent.



The heart of the dissent's criticisms rest with the temporary voluntary guidelines we propose. Professor Dickey wants guidelines which "guide" the judge toward punishing "fairly and consistently . . . toward . . . public safety commensurate with the correctional resources used." We believe we have made a large step in that direction. In the sentencing guideline notes, we adopted the reasoning process which we believe he advocated. He admits they are "occasionally insightful," but he believes the worksheet we devised and the process advocated there is too mechanistic and is too likely to cause the judge to lose sight of the broader reasoning and weighing any conscientious sentencing judge should undertake. The proper training of judges in the use of these guidelines is essential and should serve to overcome the hazard he sees in them.

In any event I strongly disagree with the suggestion in the dissent that these temporary guidelines leaves judicial discretion undisturbed, that in fact judges have unlimited discretion in sentencing and that prosecutors and defense attorneys manipulate the facts given the judge at sentencing. These assertions do not square with the reality of sentencing that I have seen in my nearly 33 years as a judge. Judges' sentencing discretion is not now unlimited. The proper exercise of discretion requires that a judge articulate a reasoning process. That is the law. Our temporary guidelines do not do away with or limit the process. In fact they are designed to guide the judge through a reasoning process that will have to be stated on the record. Furthermore, it is difficult for the prosecution and defense to hide facts from the alert sentencing judge because of pre-sentence investigation reports prepared independent of them. The dissent does not advocate mandatory guidelines. The Committee was instructed to prepare voluntary guidelines. It has done exactly that.

A final observation regarding the guidelines. Bureau of Justice Statistics bulletin entitled Prisoners in 1998 published this month shows Wisconsin as having the third highest prison population growth for the past year at 13.4%. Virginia, a Truth-in-Sentencing state with voluntary grid guidelines show a .6 % increase in prison population. Ohio, another Truth-in-Sentencing state, with voluntary guidelines showed a .9% increase. Our guidelines combines features of these two states' guidelines.

The dissent criticizes the computer prison population estimate program developed by the Committee. Some of the criticisms are valid, but it is a far more sophisticated instrument than what the state has been using. It was designed to be enlarged into the kind of program the dissent envisions. At least the foundation has been laid. To build the sort of program needed to give precise cost predictions will take another four or five years. We do not advocate that the new Sentencing Commission rely solely upon the existing computer program we have developed. It does provide a base upon which the new Commission will be able to enhance and improve.

The dissent appears to advocate doing nothing and have judges rely upon the McCleary case. We recommend nothing which would change the sentencing principles elucidated in the McCleary case, yet the dissent is highly critical of the existing sentencing system. It has produced a prison population increase that is straining our

state's resources and unless better directed in the future may impinge upon higher education budget resources.

The nub of our disagreement is what is politically "doable." The Committee is a creature of the legislature, given specific instructions by that institution. We believe we have conscientiously followed those instructions. Given our time and resource limitations we are proud of our product and believe it will serve the state well, permitting it to embark of the visionary journey the dissent would like us to undertake.

Respectfully submitted,

Thomas H. Barland  
Chair